

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 5. STATE LAND DEPARTMENT**

Authority: A.R.S. § 37-102 et seq.

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).*

*Editor's Note: The proposed summary action repealing R12-5-901 through R12-5-920 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 98-3).*

*Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 297, § 6. Exemption from A.R.S. Title 41, Chapter 6 means that the Land Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; the Land Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

*Title 12, Chapter 5, Articles 1 thru Article 23, were renumbered to bring the Chapter numbering into compliance with current format. For the old and new Section numbers, please refer to the introductory notes at the beginning of each Article in the table of contents or in the historical notes for the specific Sections.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Section R12-5-10, adopted effective August 2, 1994 (Supp. 94-3).*

*Article 1, consisting of Sections R12-5-101 thru R12-5-103, repealed effective August 2, 1994 (Supp. 94-3).*

*Article 1, consisting of Sections R12-5-01 thru R12-5-03, renumbered to Article 1, Sections R12-5-101 thru R12-5-103 (Supp. 93-3).*

**Section**

- R12-5-101. Relating to Proceedings Before the State Land Department
- R12-5-102. Repealed
- R12-5-103. Repealed

**ARTICLE 2. PRACTICE AND PROCEDURE IN  
CONTESTED CASES BEFORE THE ARIZONA STATE  
LAND COMMISSIONER**

*Article 2, consisting of Sections R12-5-201 thru R12-5-222, adopted effective August 2, 1994 (Supp. 94-3).*

**Section**

- R12-5-201. Appointment of Hearing Officer; Disqualification
- R12-5-202. Initiation of a Contested Case
- R12-5-203. Request for Hearing
- R12-5-204. Denial of Request for Hearing
- R12-5-205. Failure to Appear; Default
- R12-5-206. Amendment of Notice of Hearing; Request for More Definite Statement
- R12-5-207. Communications Regarding Matters Related to Contested Case
- R12-5-208. Representation
- R12-5-209. Notice of Hearing or Prehearing Conference
- R12-5-210. Contested Case Record
- R12-5-211. Intervention
- R12-5-212. Consolidation and Severance
- R12-5-213. Prehearing Conference, Procedure and Prehearing Order
- R12-5-214. Filing; Computation of Time; Extension of Time
- R12-5-215. Service; Proof of Service
- R12-5-216. Subpoenas
- R12-5-217. Procedure at Hearing
- R12-5-218. Evidence
- R12-5-219. Stipulations
- R12-5-220. Recommended Decision
- R12-5-221. Decision

- R12-5-222. Review and Rehearing of Decision

**ARTICLE 3. SELECTIONS, INVESTIGATIONS,  
CLASSIFICATIONS AND APPRAISALS**

*Article 2, consisting of Section R12-5-50, renumbered to Article 3, Section R12-5-301 (Supp. 93-3).*

**Section**

- R12-5-301. Expired

**ARTICLE 4. SALES**

*Article 4, consisting of Sections R12-5-71 thru R12-5-82, renumbered to Article 4, Sections R12-5-401 thru R12-5-412 (Supp. 93-3).*

**Section**

- R12-5-401. Expired
- R12-5-402. Conditions for Filing Application
- R12-5-403. Restrictions Subsequent to Filing Application to Purchase
- R12-5-404. Responsibility of the Purchaser
- R12-5-405. Evidence of Taxes and Assessments Being Paid
- R12-5-406. Assignment of a Certificate of Purchase
- R12-5-407. Expired
- R12-5-408. Partial Patent
- R12-5-409. Expired
- R12-5-410. Expired
- R12-5-411. Expired
- R12-5-412. Expired
- R12-5-413. Real Estate Broker Commissions

**ARTICLE 5. LEASES**

*Article 5, consisting of Sections R12-5-100 thru R12-5-134, renumbered to Article 5, Sections R12-5-501 thru R12-5-535 (Supp. 93-3).*

**Section**

- R12-5-501. Expired
- R12-5-502. Expired
- R12-5-503. Expired
- R12-5-504. Expired
- R12-5-505. Time for Filing Conflicting Applications
- R12-5-506. Procedure in Processing Conflicting Applications
- R12-5-507. Expired
- R12-5-508. Application Confers No Right to Land
- R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit
- R12-5-510. Expired

R12-5-511.	Expired
R12-5-512.	Assignments
R12-5-513.	Manner of Assignments
R12-5-514.	Expired
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R12-5-516.	Repealed
R12-5-517.	Rentals
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R12-5-519.	Expired
R12-5-520.	Expired
R12-5-521.	Modification or Amendment of Existing Lease or Permit
R12-5-522.	Expired
R12-5-523.	Expired
R12-5-524.	Sale, Mortgage, or Lien on Interest of Holder of Lease or Permit
R12-5-525.	Expired
R12-5-526.	Expired
R12-5-527.	Expired
R12-5-528.	Expired
R12-5-529.	Expired
R12-5-530.	Expired
R12-5-531.	Expired
R12-5-532.	Expired
R12-5-533.	Trespass on State Land
R12-5-534.	Repealed
R12-5-535.	Expired

**ARTICLE 6. IMPROVEMENTS (RESERVED)****ARTICLE 7. SPECIAL LEASING PROVISIONS**

*Article 7, consisting of Sections R12-5-150 thru R12-5-155, renumbered to Article 7, Sections R12-5-701 thru R12-5-706 (Supp. 93-3).*

## Section

R12-5-701.	Repealed
R12-5-702.	Agricultural Leases
R12-5-703.	Commercial Leases
R12-5-704.	Expired
R12-5-705.	Grazing Leases
R12-5-706.	Expired

**ARTICLE 8. RIGHTS-OF-WAY**

*Article 8, consisting of Sections R12-5-165 thru R12-5-167, renumbered to Article 8, Sections R12-5-801 thru R12-5-803 (Supp. 93-3).*

## Section

R12-5-801.	Rights-of-way
R12-5-802.	Reservoir, Dam, and Other Sites
R12-5-803.	Expired

**ARTICLE 9. EXCHANGES**

*Article 9, consisting of Sections R12-5-179 thru R12-5-199, renumbered to Article 9, Sections R12-5-901 thru R12-5-921 (Supp. 93-3).*

## Section

R12-5-901.	Scope of Rules
R12-5-902.	Definitions
R12-5-903.	Expired
R12-5-904.	Application
R12-5-905.	Expired
R12-5-906.	Expired
R12-5-907.	Expired
R12-5-908.	Expired
R12-5-909.	Expired

R12-5-910.	Maps and Photographs
R12-5-911.	Expired
R12-5-912.	Expired
R12-5-913.	Expired
R12-5-914.	Expired
R12-5-915.	Expired
R12-5-916.	Expired
R12-5-917.	Expired
R12-5-918.	Controversy as to Title or Leasehold Rights
R12-5-919.	Expired
R12-5-920.	Expired
R12-5-921.	Exchange of Road Rights-of-way over State Land

**ARTICLE 10. EXPIRED**

*Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).*

*Article 10, consisting of Sections R12-5-200 thru R12-5-211, renumbered to Article 10, Sections R12-5-1001 thru R12-5-1022 (Supp. 93-3).*

## Section

R12-5-1001.	Expired
R12-5-1002.	Expired
R12-5-1003.	Expired
R12-5-1004.	Expired
R12-5-1005.	Expired
R12-5-1006.	Expired
R12-5-1007.	Expired
R12-5-1008.	Expired
R12-5-1009.	Expired
R12-5-1010.	Expired
R12-5-1011.	Expired
R12-5-1012.	Expired

**ARTICLE 11. SPECIAL USE PERMITS**

*Article 11, consisting of Section R12-5-241, renumbered to Article 11, Section R12-5-1101 (Supp. 93-3).*

## Section

R12-5-1101.	Policy; Use of Lands
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**ARTICLE 12. REPEALED**

*Article 12, consisting of Section R12-5-1201, adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996, now the permanent effective date (Supp. 96-4).*

*Article 12, consisting of Section R12-5-1201, repealed by summary action with an interim effective date of August 30, 1996; filed with the Office of the Secretary of State August 8, 1996 (Supp. 96-3).*

*Article 12, consisting of Section R12-5-301, renumbered to Article 12, Section R12-5-1201 (Supp. 93-3).*

**ARTICLE 13. REPEALED**

*Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).*

*Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).*

*Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).*

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*Article 13, consisting of Sections R12-5-1301 and R12-5-1302, renumbered from Article 5, Sections R12-5-501 and R12-5-502 (Supp. 93-3).*

**ARTICLE 14. REPEALED**

*Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).*

*The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).*

**ARTICLE 15. REPEALED**

*Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).*

*The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).*

**ARTICLE 16. REPEALED**

*Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).*

*Article 16, consisting of Sections R12-5-1601 thru R12-5-1612, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).*

*Article 16, consisting of Sections R12-5-560 thru R12-5-564, renumbered to Article 16, Sections R12-5-1601 thru R12-5-1605; Sections R12-5-1605 thru R12-5-1612 renumbered from Article 16, Sections R12-5-570 thru R12-5-576 (Supp. 93-3).*

**ARTICLE 16.1. RENUMBERED**

*Article 16.1, consisting of Sections R12-5-570 thru R12-5-576, renumbered to Article 16, Sections R12-5-1606 thru R12-5-1612 (Supp. 93-3).*

**ARTICLE 17. NATURAL RESOURCE CONSERVATION DISTRICTS**

*Article 17, consisting of Sections R12-5-600 thru R12-5-623, renumbered to Article 17, Sections R12-5-1701 thru R12-5-1724 (Supp. 93-3).*

Section

R12-5-1701. Repealed  
R12-5-1702. Repealed  
R12-5-1703. Repealed  
R12-5-1704. Repealed  
R12-5-1705. Repealed  
R12-5-1706. Repealed  
R12-5-1707. Conduct of Hearing  
R12-5-1708. Repealed  
R12-5-1709. Repealed  
R12-5-1710. Repealed  
R12-5-1711. Repealed  
R12-5-1712. Repealed  
R12-5-1713. Repealed  
R12-5-1714. Repealed  
R12-5-1715. Repealed  
R12-5-1716. Repealed  
R12-5-1717. Repealed  
R12-5-1718. Repealed  
R12-5-1719. Repealed  
R12-5-1720. Repealed

R12-5-1721. Repealed  
R12-5-1722. Repealed  
R12-5-1723. Repealed  
R12-5-1724. Repealed

**ARTICLE 18. MINERAL LEASES**

*Article 18, consisting of Sections R12-5-701 thru R12-5-707, renumbered to Article 18, Sections R12-5-1801 thru R12-5-1807 (Supp. 93-3).*

Section

R12-5-1801. Definitions  
R12-5-1802. Expired  
R12-5-1803. Expired  
R12-5-1804. Expired  
R12-5-1805. Lease for Mineral Claim  
R12-5-1806. Records and Reports  
R12-5-1807. Relating to Mineral Reservations

**ARTICLE 19. PROSPECTING PERMITS**

*Article 19, consisting of Sections R12-5-731 thru R12-5-735, renumbered to Article 19, Sections R12-5-1901 thru R12-5-1905 (Supp. 93-3).*

Section

R12-5-1901. Definitions  
R12-5-1902. Miscellaneous Rules  
R12-5-1903. Application for Permit  
R12-5-1904. Expired  
R12-5-1905. Conversion of Permitted Acreage to Mineral Lease

**ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS**

*Article 20, consisting of Sections R12-5-771 thru R12-5-779, renumbered to Article 20, Sections R12-5-2001 thru R12-5-2009 (Supp. 93-3).*

Section

R12-5-2001. Definitions  
R12-5-2002. Miscellaneous Rules  
R12-5-2003. Application for Purchase  
R12-5-2004. Exploration Permits  
R12-5-2005. Use of Land  
R12-5-2006. Notice and Conduct of Competitive Sales  
R12-5-2007. Common Mineral Materials  
R12-5-2008. Natural Products -- Groundwater  
R12-5-2009. All Other Natural Products

**ARTICLE 21. OIL AND GAS LEASES**

*Article 21, consisting of Sections R12-5-781 thru R12-5-802, renumbered to Article 21, Sections R12-5-2101 thru R12-5-2122 (Supp. 93-3).*

Section

R12-5-2101. Definitions  
R12-5-2102. Who May Lease for Oil and Gas -- Qualified Lessees  
R12-5-2103. Applications for Noncompetitive Oil and Gas Leases  
R12-5-2104. Applications for Noncompetitive Leases -- Time for Filing  
R12-5-2105. Simultaneous Filings -- Conflicts  
R12-5-2106. Department's Decisions -- Conflicts  
R12-5-2107. Applications -- Refunds  
R12-5-2108. Noncompetitive Lease Form  
R12-5-2109. Acreage Limitations  
R12-5-2110. Withdrawals from Leasing  
R12-5-2111. Competitive Leases -- Designation and Offer of Lands for Lease  
R12-5-2112. Notice of Competitive Lease Offer

R12-5-2113.	Qualifications of Successful Bidder
R12-5-2114.	Competitive Lease Form
R12-5-2115.	Award of Lease
R12-5-2116.	Surface Use
R12-5-2117.	Conduct of Operations
R12-5-2118.	Cooperative and Unit Agreements
R12-5-2119.	Assignments
R12-5-2120.	Surrender
R12-5-2121.	Rental Notices
R12-5-2122.	Monthly Statements

## ARTICLE 22. GEOTHERMAL RESOURCES

*Article 22, consisting of Sections R12-5-850 thru R12-5-873, renumbered to Article 22, Sections R12-5-2201 thru R12-5-2224 (Supp. 93-3).*

Section	
R12-5-2201.	Definitions
R12-5-2202.	Expired
R12-5-2203.	Applications -- Refunds
R12-5-2204.	Terms of Lease
R12-5-2205.	Lease of State Lands
R12-5-2206.	Designation and Offer of Lands for Lease
R12-5-2207.	Qualifications of Successful Bidder
R12-5-2208.	Award of Lease
R12-5-2209.	Surface Use
R12-5-2210.	Environmental Protection and Conduct of Operations
R12-5-2211.	Cooperative and Unit Agreements
R12-5-2212.	Assignments
R12-5-2213.	Surrender
R12-5-2214.	Expired
R12-5-2215.	Royalty
R12-5-2216.	Abandonment -- Other Uses
R12-5-2217.	Logs -- Reports -- Records
R12-5-2218.	Repealed
R12-5-2219.	Repealed
R12-5-2220.	Repealed
R12-5-2221.	Repealed
R12-5-2222.	Repealed
R12-5-2223.	Repealed
R12-5-2224.	Repealed

## ARTICLE 23. BOARD OF APPEALS

(Authority: A.R.S. § 37-213 et seq.)

*Article 23, consisting of Section R12-5-901 renumbered to Article 23, Section R12-5-2301 (Supp. 93-3).*

Section	
R12-5-2301.	Definitions
R12-5-2302.	Contents of a Notice of Appeal
R12-5-2303.	Notice of Hearing
R12-5-2304.	Prehearing Disclosure
R12-5-2305.	Continuances
R12-5-2306.	Computation of Time; Additional Time After Service by Mail
R12-5-2307.	Service of Documents Other than Subpoenas
R12-5-2308.	Subpoenas
R12-5-2309.	Motions
R12-5-2310.	Hearing
R12-5-2311.	Evidence
R12-5-2312.	Objection to Decision by Chairperson
R12-5-2313.	Ex Parte Communications
R12-5-2314.	Decision of the Board
R12-5-2315.	Rehearing or Review of Decisions

## ARTICLE 24. EXPIRED

*Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).*

Section	
R12-5-2401.	Expired
R12-5-2402.	Expired
R12-5-2403.	Expired
R12-5-2404.	Expired
R12-5-2405.	Expired

## ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

*Article 25, consisting of Sections R12-5-2501 thru R12-5-2503, adopted effective March 5, 1998 (Supp. 98-1).*

Section	
R12-5-2501.	Petition
R12-5-2502.	Reclassification
R12-5-2503.	Bond

## ARTICLE 1. GENERAL PROVISIONS

### R12-5-101. Relating to Proceedings Before the State Land Department

Except as otherwise provided in Article 2:

1. Computation of time. In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.
2. Enlargement of time. When, by these rules or by a notice given thereunder or by order of the Commissioner, an act is required or allowed to be done at or within a specified time, the Commissioner may, for cause shown at any time in the Commissioner's discretion with notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or upon request made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.
3. Record. Every document and other object filed in the Department shall constitute a part of the record thereof and shall be available for public inspection except as prohibited by law.
4. Inspection of records. The records of the Department, except as prohibited by law, may be inspected by any person at any time during the office hours of the Department.
5. Withdrawal of papers. No instruments, documents, or other papers or objects on file with the Department may be taken from the Department office, except for the use of the Commissioner or the Commissioner's duly appointed deputies or employees or by order of a court of competent jurisdiction.
6. Clerical mistakes. Clerical mistakes in decisions, orders, instruments, or other records of the Department or parts thereof and errors therein arising from oversight or omission may be corrected by the Commissioner at any time

on the Commissioner's own initiative or on motion of any party and after such notice, if any, as the Commissioner orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court and thereafter, while the appeal is pending, may be corrected with leave of the appellate court.

7. Forms supplied. All applications or reports required by law or under these rules to be filed with the Department shall be submitted upon forms prescribed and furnished by the Department, unless accepted or authorized in writing by the Commissioner.
8. No application will be accepted without the payment of the required application fee and unless all answers to questions and all information and other data required by the Commissioner have been furnished.
9. Manner of signing instruments before the Department; acknowledgment. All instruments are required to be signed in the same manner as the applicant's, lessee's, or permittee's name appears of record in the Department or in the manner in which a new instrument is requested to be issued. All assignments of instruments shall be signed and acknowledged in the same manner as required for the signing and acknowledgment of a deed or conveyance of real property.

#### Historical Note

Original rule, Ch. I (Supp. 76-4). Section R12-5-101 renumbered from Section R12-5-01 (Supp. 93-3). Section repealed, new Section adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-102. Repealed

#### Historical Note

Original rule, Subchapter A, Ch. II (Supp. 76-4). Section R12-5-102 renumbered from Section R12-5-02 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3).

#### R12-5-103. Repealed

#### Historical Note

Adopted effective May 13, 1977 (Supp. 77-3). Correction, omission from subsection (A) in Supp. 77-3 (Supp. 77-6). Section R12-5-103 renumbered from Section R12-5-03 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3).

### ARTICLE 2. PRACTICE AND PROCEDURE IN CONTESTED CASES BEFORE THE ARIZONA STATE LAND COMMISSIONER

#### R12-5-201. Appointment of Hearing Officer; Disqualification

- A. The Commissioner may appoint a hearing officer to conduct any contested case on the Commissioner's behalf.
- B. If a hearing officer is disqualified pursuant to this rule, or for any reason cannot continue to preside at the hearing of a contested case, a new hearing officer may be appointed.
- C. Any party may file a request to disqualify the hearing officer for cause.
  1. The request shall be filed with the Department within ten days of service of the initial notice of hearing or prehearing conference or within five days after the discovery of facts indicating cause exists to disqualify the hearing officer.
  2. The request shall be accompanied by an affidavit setting forth the facts that show cause for disqualification.

3. The request shall allege one or more of the following causes for disqualification:
  - a. That the hearing officer, if a lawyer, has represented a party to the contested case before the Department within the past two years;
  - b. That the hearing officer has a financial interest in the outcome of the contested case;
  - c. That the hearing officer is related to a party;
  - d. That the hearing officer has been employed by a party, other than the Department, within the past two years;
  - e. That the hearing officer is a witness;
  - f. That the party filing the affidavit has cause to believe and does believe that the party cannot obtain a fair and impartial hearing because of the bias, prejudice, or interest of the hearing officer.
4. While a request to disqualify is pending before the Commissioner, the hearing officer shall take no further action in the contested case except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-202. Initiation of a Contested Case

- A. A contested case may be initiated by the Department on its own volition.
- B. The following persons may request a hearing:
  1. Any person whose legal rights, duties, or privileges have been directly and adversely affected by a written order or decision of the Commissioner concluding a matter under consideration by the Department, if that order or decision is not preceded by an opportunity for a hearing;
  2. Any person whose legal rights, duties, or privileges are required to be determined after an opportunity for a hearing by statute, rule, or as otherwise provided by law;
  3. After a notice of default or failure to comply has been mailed, any lessee or certificate-of-purchase holder, or any person who has registered with the Department as a mortgagee or other lienholder of the interest of the lessee or certificate holder.
- C. A request for hearing shall be filed within the time allowed by statute to cure or comply. The purpose of the hearing shall be to determine whether a formal cancellation order shall be entered, and any other issues relevant to the cancellation that are within the jurisdiction of the Commissioner to decide. Notwithstanding subsections (A) and (C) of this rule, no opportunity for a hearing shall be granted when automatic termination of a lease or automatic cancellation of a certificate of purchase is mandated by statute.
- D. No other person has standing to initiate a contested case.
- E. Unless a different period is provided by statute, rule, or within the order or decision, a request for hearing shall be filed within 20 days of mailing, by certified mail, of the Commissioner's order or decision.
- F. The hearing shall take place before the Commissioner or before the Board of Appeals, whichever has jurisdiction to hear the matter.
- G. The Department shall initiate a contested case by serving a copy of the notice of hearing on the named parties.
- H. If no request for a hearing is timely filed, the order or decision of the Commissioner shall be final and not subject to further review.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-203. Request for Hearing**

When a request for a hearing is filed with the Department, the request shall be in writing and shall state the specific actions of the Department which are the basis of the hearing request and the statute, rule, or other legal basis entitling the person to a hearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-204. Denial of Request for Hearing**

If the Commissioner denies the request for a hearing, the denial shall be in writing and shall state the reasons therefor. A denial of a request for hearing is final and not subject to further administrative review.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-205. Failure to Appear; Default**

- A. If, after being served by the Department with notice, a party fails to appear at the time and place of hearing, or prehearing conference, or other proceeding of a contested case, the hearing officer may serve upon all parties a proposed default order that includes a statement of the reasons to default the nonparticipating party.
- B. Within seven days after service of a proposed default order, the party against whom it was issued may file a written request to vacate the proposed default order, including a statement of the reasons it should be vacated.
- C. Before the default order is vacated or entered, the hearing officer may either adjourn the proceedings or conduct them without the party against whom a proposed default order was issued, maintaining due regard for the interest of justice and the orderly and prompt conduct of the proceedings.
- D. The hearing officer shall either enter or vacate the default order promptly after expiration of the time specified in subsection (B) of this rule or upon filing of the request to vacate.
- E. After entering a default order, the hearing officer may conduct any further proceedings necessary to complete the contested case without the defaulted party and shall determine all issues in the hearing, including those affecting that party.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-206. Amendment of Notice of Hearing; Request for More Definite Statement**

- A. No later than ten days after a notice of hearing is issued, a party may request a more definite statement of the issues or assertions or both. If the request is granted, the hearing officer shall set a date for filing a more definite statement.
- B. At any time before the hearing commences, the Department may amend the notice of hearing to add additional issues or make additional assertions. The hearing officer may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-207. Communications Regarding Matters Related to Contested Case**

Once a notice of hearing has been issued, all communications relating to the contested case between any person listed in subsection (1) and any person listed in subsection (2) below shall take place in a formal hearing or conference, in the presence of all parties or their attorneys, if represented, or be filed in accordance with R12-5-215.

1. Any party, any person whose interest may be affected by the outcome of the case, or any person acting on behalf of any of them.

2. The Commissioner, the Deputy Commissioner, or any officer of the Department, if acting as the decision-maker in the Commissioner's stead, any member of the Commissioner's staff involved in the decisional process, or the hearing officer.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-208. Representation**

Parties may participate in the hearing in person or through an attorney, except that a corporation shall be represented by an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a governmental subdivision or unit of a governmental subdivision may appear through an employee.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-209. Notice of Hearing or Prehearing Conference**

- A. The notice of hearing shall contain:
  1. A caption referencing the official Department case number and a brief matter name or the names of the parties and their status, or both;
  2. The time, place, and nature of the hearing;
  3. A statement of the legal authority and Jurisdiction under which the hearing is to be held;
  4. A short, plain statement of the subject matter and issues presented, with citation to any statute or rule relied upon;
  5. The name, mailing address, and telephone number of the hearing officer;
  6. The names and mailing addresses of persons to whom notice is being given, including any attorney or employee who has been designated to appear for a Department Division; and
  7. Any other matters required by statute or rule.
- B. The notice may set the time, place, and subject matter of a prehearing conference and include any other matters the presiding officer considers desirable to expedite the proceedings.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-210. Contested Case Record**

- A. After the notice of hearing is issued, the contested-case file shall be available for inspection upon request during regular business hours.
- B. All hearings shall be electronically or stenographically reported. The hearing officer shall designate the official record of the proceedings. This rule shall not be construed as prohibiting or limiting any person from having the proceedings stenographically reported or from making their own recording, so long as the proceedings are not disrupted by the recording equipment or operators. The cost of a court reporter and the transcript shall be paid by the person making the request, unless assessment of the cost is waived by the Department. When hearings are recorded electronically, tapes shall be available for review during regular business hours. The cost of copies of tapes shall be paid by the person requesting them. The original transcript of the official record of any proceeding, if available, shall be filed as a part of the case file.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-211. Intervention**

- A. A person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing officer determines that:

1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;
  2. Intervention will not unduly delay or bias the hearing;
  3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and
  4. The proposed intervention is in the interests of justice.
- B.** The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests, and may address the other issues to be determined by the hearing officer.
  - C.** The request shall be filed and served upon all parties at least 15 days prior to hearing.
  - D.** Any party may file a response to the request to intervene within five days of service of the request upon the party.
  - E.** The hearing officer shall decide on the request to intervene at least three days prior to the hearing date and shall promptly notify the person requesting to intervene and all parties of the decision. The hearing officer may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.
  - F.** The hearing officer may limit the intervenor's participation to issues in which the intervenor has a particular interest.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-212. Consolidation and Severance**

- A.** When proceedings involving a common question of law or fact or common parties are pending before the Department, the hearing officer may, upon the hearing officer's own volition or upon request of any party, order a joint hearing on any or all the matters at issue.
- B.** In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the hearing officer may, upon the hearing officer's own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-213. Prehearing Conference, Procedure and Prehearing Order**

- A.** The hearing officer may hold a prehearing conference to consider matters set forth in subsection (B) of this rule and shall promptly notify the parties and any person whose request to intervene is pending. Any party may request a prehearing conference.
- B.** A prehearing conference may be convened to consider consolidation; severance; intervention; settlement; stipulations; clarification of issues; the extent of prehearing discovery, if any; rulings regarding issuance of subpoenas, discovery orders, and protective orders; rulings on identity of and limitation of the number of witnesses; objections to proffers of evidence; use of written presentation for direct evidence, rebuttal evidence, or cross-examination; use of telephone, television, or other electronic means as a substitute for proceedings in person; order of presentation of evidence and cross-examination; and such other matters as will promote the orderly and prompt conduct of the hearing.
- C.** The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means so long as each participant in the conference has an opportunity to participate during the entire proceeding.

- D.** The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order based on the contested case record.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-214. Filing; Computation of Time; Extension of Time**

- A.** All papers concerning a contested case shall be filed with the Department within the time limit, if any, for such filing.
- B.** All papers filed with the Department in any contested case shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy, and shall be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not interposed for delay.
- C.** In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a contested case, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. The computation shall include intermediate Saturdays, Sundays, and holidays.
- D.** Whenever a party has the right or is required to do some act within a prescribed period after the service of a paper upon the party by another party, and the paper is served by mail, five days shall be added to the prescribed period. This subsection has no application to notices, orders, or other papers issued by the hearing officer or the Commissioner.
- E.** For good cause shown, the hearing officer may grant continuances and extensions of time.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-215. Service; Proof of Service**

- A.** After a notice of hearing has initiated a contested case, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the contested case, or their lawyers if represented, at the same time the paper is filed. Service shall be complete at the time of personal service or on the date placed in the mail if served by certified or regular mail addressed to the last address of record in the contested case file.
- B.** The following evidences completed service:
  1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of such service; or
  2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
  3. If served by regular or certified mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C.** The Department shall serve notices of hearing or prehearing conference; findings, conclusions, and recommended decisions of the hearing officer; and decisions and final orders,

either by personal service or by certified mail. All other papers required to be served may be served by regular or certified mail or may be personally served.

- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of a Division of the Department, or, if no Assistant Attorney General is named, then on the Attorney General, Civil Division, Land and Natural Resources Section.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-216. Subpoenas

- A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.
- B. A request for a hearing subpoena shall be in writing, filed with the Department, and served on each party at least seven days prior to the date set for hearing and shall state:
1. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
  2. The name and address of the witness subpoenaed; and
  3. The documents, if any, sought to be provided.
- C. A request for a prehearing deposition or a subpoena for the production of documents prior to the hearing shall be in writing and may be granted at the hearing officer's discretion only upon a showing of a reasonable need, including facts expected to be established by the person or document subpoenaed and the reasons such facts are relevant and material and not unduly repetitious.
- D. The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for hearing, the hearing officer grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing officer shall grant or deny such request by order.
- E. The party requesting the subpoena shall prepare it and cause it to be served upon the person to whom it is directed in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the Department.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-217. Procedure at Hearing

- A. At the hearing the hearing officer shall regulate the course of the proceedings, giving all parties the opportunity to testify, respond, present evidence and argument, present witnesses, conduct examination and cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.
- B. The hearing officer may give nonparties an opportunity to present, under oath, oral or written statements. The hearing officer shall give all parties an opportunity to cross-examine a nonparty witness and to challenge or rebut statements of nonparties.
- C. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
- D. All hearings are open to public observation, except where closed pursuant to an express provision of law. A hearing con-

ducted by telephone, television, or other electronic means shall be made available to members of the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.

- E. If for any reason a hearing officer cannot continue with a contested case, a new hearing officer shall use any existing record and may conduct such further proceedings as the interests of justice may require.
- F. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-218. Evidence

- A. All witnesses shall testify under oath or affirmation. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing officer has determined to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of evidence on which reasonably prudent people would rely, even if it would be inadmissible in a civil court trial.
- B. Unless otherwise ordered by the hearing officer, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the Department, unless the hearing officer otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is in such volume as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-219. Stipulations

Parties to any contested case may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the hearing officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts for the hearing officer's consideration. No substantive matter agreed to by the parties shall be binding upon the Department unless incorporated into the decision of the Commissioner.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).

#### R12-5-220. Recommended Decision

- A. If a hearing officer presides at the hearing, a recommended decision shall be prepared for the Commissioner.
- B. A recommended decision shall be delivered to the Commissioner within 30 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Commissioner extends the period for good cause.

#### Historical Note

Adopted effective August 2, 1994 (Supp. 94-3).



**R12-5-221. Decision**

- A. A decision shall include separately stated findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reasoning for the remedy recommended. The experience, technical competence, or specialized knowledge of the Commissioner and that of the Commissioner's staff may be utilized in evaluating the evidence.
- B. When the Commissioner is the hearing officer, the decision shall be rendered within 60 days following the final day of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last.
- C. Within 30 days after receipt of any recommended decision from the hearing officer, the Commissioner shall render a decision adopting the recommended decision, or modifying it and setting forth the reasons for departing from the recommendation, and the evidence supporting the modification.
- D. If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective ten days from the date served on that party and is not subject to judicial review pursuant to A.R.S. § 37-134.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

**R12-5-222. Review and Rehearing of Decision**

- A. Except as provided in subsection (G) of this rule, any party to a contested case before the Commissioner who is aggrieved by a decision rendered in such case may file with the Department, not later than ten days from the date of service of the decision, a written request for rehearing or review of the decision. The request shall specify the particular grounds for rehearing or review.
- B. A party may file a response to a request for rehearing or review within ten days after service of the request or amended request by any other party. The Commissioner may require the filing of written argument on any issue raised in the request and may provide for oral argument.
- C. A rehearing of the decision may be granted for any of the following causes materially affecting the requesting party's rights:
  1. Irregularity in the proceedings before the Commissioner or any order or abuse of discretion, whereby the requesting party was deprived of a fair hearing;
  2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient remedies;
  6. Error in the admission or rejection of evidence or other errors of law occurring in the proceedings;
  7. The decision is not justified by the evidence or is contrary to law.
- D. On review the Commissioner may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C) of this rule. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the contested case may participate as parties at any rehearing.
- E. The Commissioner may, on the Commissioner's volition, order a rehearing or review of the Commissioner's decision within ten days after a decision is rendered, for any reason for

which a rehearing on request of a party might have been granted. The order granting such a rehearing shall specify the grounds therefor.

- F. When a request for rehearing is based on affidavits, they shall be served with the request. An opposing party may, within ten days after the service, serve opposing affidavits.
- G. If in a particular decision the Commissioner makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commissioner's final decision.
- H. If, after a timely request for rehearing or review, the decision is affirmed or modified without rehearing, the decision is final on the date affirmed or modified. If a rehearing is granted, the decision made after rehearing is final on the date rendered. A final decision is subject to judicial review pursuant to A.R.S. § 37-134.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3).

### ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS

**R12-5-301. Expired****Historical Note**

Original rule, Subchapter D, Ch. II (Supp. 76-4). Section R12-5-301 renumbered from Section R12-5-50 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

### ARTICLE 4. SALES

**R12-5-401. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-401 renumbered from Section R12-5-71 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-402. Conditions for Filing Application**

- A. An application shall cover only one section or subdivision thereof.
- B. When the application is made by one claiming a right to reimbursement for improvements placed upon state land, the applicant shall attach a list of the improvements placed or made upon said lands.
- C. The applicant to purchase state land shall deposit an amount of money sufficient to pay the expense incidental to bringing a parcel of land to sale when the Department determines that the benefit to be derived from the sale is less than the expense involved.
- D. An application to purchase state land cannot be withdrawn without the approval of the Commissioner.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-402 renumbered from Section R12-5-72 (Supp. 93-3).

**R12-5-403. Restrictions Subsequent to Filing Application to Purchase**

No lessee may file any transfer, assignment, mortgage or application affecting the lands covered in their application to purchase.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-403 renumbered from Section R12-5-73 (Supp. 93-3).

**R12-5-404. Responsibility of the Purchaser**

- A. The recording of a Certificate of Purchase and/or Patent with the County Recorder of the County in which the lands are located.
- B. Payment of the taxes, water assessments and other charges which may be assessed against the land.
- C. Protection of the lands against any loss or waste to or upon the lands.
- D. To maintain any right to the use of water appurtenant to the land against forfeiture or abandonment of the right.
- E. File a report with the State Land Commissioner of the sale of any sand, gravel, stone or other natural product from the land.
- F. Acquire the consent of the Department prior to granting a right-of-way on the land.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-404 renumbered from Section R12-5-74 (Supp. 93-3).

**R12-5-405. Evidence of Taxes and Assessments Being Paid**

- A. Receipt of taxes and/or assessments having been paid, for the current year must accompany the annual payments of principal and interest for a certificate of purchase.
- B. No extension of time will be granted for the payment of annual installments of principal on a Certificate of Purchase until current interest on unpaid principal balance has been paid and evidence of taxes and/or assessments having been paid is submitted to the Department.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-405 renumbered from Section R12-5-75 (Supp. 93-3).

**R12-5-406. Assignment of a Certificate of Purchase**

- A. The transfer of a Certificate of Purchase will be made only upon the filing of an "Application to Assign and Assumption of Certificate of Purchase" form which will be supplied by this Department.
- B. An application to assign and assumption of a Certificate of Purchase will not be approved:
  1. When the annual payments are found to be in arrears.
  2. When taxes are found to be in arrears.
  3. When the release or satisfaction of a lien or mortgage filed with the Department has not been submitted with said application.
  4. When affidavit of citizenship in the United States and/or statement of authorization to do business in the state of Arizona has not been submitted with said application.
- C. No portion, less than all of the lands covered in a Certificate of Purchase, can be assigned.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-406 renumbered from Section R12-5-76 (Supp. 93-3).

**R12-5-407. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-407 renumbered from Section R12-5-77 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-408. Partial Patent**

- A. The owner of a Certificate of Purchase shall use a Department form when filing an Application for Patent on Part of a Certificate of Purchase, which must be accompanied by:
  1. \$5.00 filing fee.
  2. A deposit of \$350.00, to be applied to the cost of appraisal of the land and improvements, if any.
  3. A plat of survey (drawing size 17" x 26") by a Registered Civil Engineer, showing the lands covered by the Certificate of Purchase and the lands described in this application.
  4. Original copy of Certificate of Purchase from which this partial release to patent is requested.
  5. A document showing Satisfaction or Release of Mortgage or other encumbrances covering lands to be patented.
  6. A notarized or other duly authenticated document setting forth the name of the person authorized to sign for a individual, partnership, group, company, corporation, etc.
- B. No consideration will be given applications to patent a part of a Certificate of Purchase which is in default, as to payment of principal, interest, taxes or any other default.
- C. If the application or any of its attachments is deficient, the Commissioner shall immediately notify the applicant of the deficiency and the applicant shall within 20 days, or such further time as the Commissioner may allow, remedy such deficiency, otherwise the application shall be deemed withdrawn.
- D. Upon the filing of a proper application, the Commissioner shall appraise the parcel to be patented and improvements, if any, and upon completion of the appraisal, if the Commissioner finds that it is for the best interest of the state to patent said parcel, the Commissioner shall make an order authorizing the patenting of the land and setting forth the appraised value of the land and improvements. If the Commissioner finds that it is not in the best interest of the state to allow patenting of said parcel, the application shall be rejected by order of the Commissioner.
- E. Orders whether authorizing the patenting of the land or rejecting the application shall be issued by the Commissioner within 60 days after the completion of the appraisal.
- F. If the purchaser fails to complete any of the required payments within 60 days or such further time as may be granted in writing by the Commissioner, the application shall be deemed to have been withdrawn by the applicant.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-408 renumbered from Section R12-5-78 (Supp. 93-3).

**R12-5-409. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-409 renumbered from Section R12-5-79 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-410. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-410 renumbered from Section R12-5-80 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-411. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-411 renumbered from Section R12-5-81 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-412. Expired****Historical Note**

Adopted effective March 6, 1979 (Supp. 79-2). Section R12-5-412 renumbered from Section R12-5-82 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

*Editor's Note: The following Section was amended by emergency rulemaking effective December 20, 2002 to November 18, 2003. The State Land Department filed a rulemaking package for the permanent Section October 8, 2003, without requesting an immediate effective date. The effective date of the permanent rule would have been December 7, 2003, creating a three-week "window" during which neither the emergency rule nor the amended permanent rule would have been in effect. To avoid this, the Department refiled the permanent rule with the Governor's Regulatory Review Council, this time requesting an immediate effective date. G.R.R.C. approved the refiled rule and filed it with the Secretary of State November 4, 2003, thereby resolving the issue (Supp. 03-4).*

**R12-5-413. Real Estate Broker Commissions**

- A. The Commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the Commissioner shall consider the following factors:
  1. The appraised value of the parcel being offered,
  2. The location and size of the parcel being offered,
  3. The terms of the sale or lease,
  4. The marketability of the land, and
  5. The best interest of the State Trust.
- B. If a commission is offered for the sale or long-term commercial lease of state land at public auction, the Department shall pay the commission from the fees collected under A.R.S. § 37-108(A)(10)(a).
- C. The Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D. Upon determination by the Commissioner that a commission will be offered on a sale or long-term commercial lease, a person holding an active real estate broker license in this state is eligible to receive the commission, from the Department, by registering with the Department the successful purchaser or lessee at public auction. A broker shall register himself or herself and the potential purchaser or lessee with the Department no later than three business days before the auction. The broker shall register in writing and include the following:
  1. Name and address of the brokerage;
  2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;

3. Name and address of the potential purchaser or lessee;
4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and
5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.

- E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter, Phoenix, Arizona 85007. The Department deems registration received on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
  1. A potential purchaser or lessee who is registered with another broker for the same auction, or
  2. A governmental agency.
- F. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this Section.
- H. For the purpose of this Section, the following definitions apply:
  1. "Long-term commercial lease" means a lease granted on state land for commercial purposes to the highest and best bidder at public auction for a term in excess of 10 years, but not more than 99 years.
  2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

**Historical Note**

Adopted effective February 9, 1996 (Supp. 96-1). Section R12-5-413 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5151, effective December 20, 2002 for a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1963, effective May 23, 2003 for a period of 180 days (Supp. 03-2). Emergency rule repealed under A.R.S. § 41-1026(E); replaced by permanent Section R12-5-413 amended by final rulemaking at 9 A.A.R. 5038, effective November 4, 2003. For more information, see the Editor's Note preceding this Section (Supp. 03-4).

**ARTICLE 5. LEASES****R12-5-501. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-501 renumbered from Section R12-5-100 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-502. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-502 renumbered from Section R12-5-101 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-503. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-503 renumbered from Section R12-5-102  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-504. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-504 renumbered from Section R12-5-103  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-505. Time for Filing Conflicting Applications**

- A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.
- B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.
- C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.
- D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-505 renumbered from Section R12-5-104  
(Supp. 93-3). Section repealed; new Section made by  
final rulemaking at 9 A.A.R. 3817, effective October 4,  
2003 (Supp. 03-3).

**R12-5-506. Procedure in Processing Conflicting Applications**

- A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.
- B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).
- C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.

- D. In conducting an investigation and review, the Department shall consider the following factors:

1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;
2. Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
3. The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
4. The applicant's willingness to reimburse the owner of reimbursable non-removable improvements;
5. The applicant's previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;
6. The applicant's experience associated with the proposed use of land;
7. Impact of the proposed use on future utility and income potential of the land;
8. Impact to surrounding state land;
9. Recommendations of the Department's staff; and
10. Any other considerations in the best interest of the Trust.

- E. After investigation and review of the statements of equities, the Department may:

1. Request additional information from an applicant;
2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
3. Award the lease or permit to an applicant;
4. Reject all applications; or
5. Proceed to bid according to A.R.S. § 37-284.

- F. The bid process is as follows:

1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.
5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:
  - a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.
  - b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.
6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the

Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.

- G.** Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

**R12-5-507. Expired**

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-507 renumbered from Section R12-5-106 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-508. Application Confers No Right to Land**

An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).

**R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit**

All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner's decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, being signed, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner,

the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisement as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered lease or permit.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-509 renumbered from Section R12-5-108 (Supp. 93-3).

**R12-5-510. Expired**

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-510 renumbered from Section R12-5-109 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-511. Expired**

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-511 renumbered from Section R12-5-110 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-512. Assignments**

- A.** A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.
1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.
- B.** An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year's advance rentals have been made.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

**R12-5-513. Manner of Assignments**

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and appli-

cation for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands being transferred must be by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee's or permittee's interest in said lease or permit.

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).

#### **R12-5-514. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-514 renumbered from Section R12-5-113 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-515. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Amended effective October 4, 1978 (Supp. 78-5). Section R12-5-515 renumbered from Section R12-5-114 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-516. Repealed**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-516 renumbered from Section R12-5-115 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

#### **R12-5-517. Rentals**

Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).

#### **R12-5-518. Rental Notices**

If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner's records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner.

In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date whichever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-518 renumbered from Section R12-5-117 (Supp. 93-3).

#### **R12-5-519. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-519 renumbered from Section R12-5-118 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-520. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-520 renumbered from Section R12-5-119 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-521. Modification or Amendment of Existing Lease or Permit**

No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-521 renumbered from Section R12-5-120 (Supp. 93-3).

#### **R12-5-522. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-522 renumbered from Section R12-5-121 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-523. Expired**

#### **Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-523 renumbered from Section R12-5-122 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### **R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit**

The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien.

Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-524 renumbered from Section R12-5-123 (Supp. 93-3).

#### R12-5-525. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-525 renumbered from Section R12-5-124 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-526. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-526 renumbered from Section R12-5-125 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-527. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-527 renumbered from Section R12-5-126 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-528. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-528 renumbered from Section R12-5-127 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-529. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-529 renumbered from Section R12-5-128 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-530. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-530 renumbered from Section R12-5-129 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-531. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-531 renumbered from Section R12-5-130 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-532. Expired

#### Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-532 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

#### R12-5-533. Trespass on State Land

- A. Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.
- B. Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.
- C. All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.
- D. It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:
  1. By the general public using public roads and highways that cross state trust lands;
  2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and
  3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:
    - a. On existing roads; or

- b. For cross-country travel without damaging crop-lands, improvements, or cultural or historic sites to pick up legally killed big game animals.
- E. For the purpose of this Section, the following definitions apply:
  1. "Cross-country travel" means travel over the countryside other than on existing roads.
  2. "Existing road" means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.
  3. "Motorized vehicle" means any vehicle deriving motive power from any source other than muscle or wind.
  4. "Public roads and highways" means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-533 renumbered from Section R12-5-132 (Supp. 93-3). Amended effective May 20, 1994 (Supp. 94-2).

**R12-5-534. Repealed****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-534 renumbered from Section R12-5-133 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

**R12-5-535. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-535 renumbered from Section R12-5-134 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**ARTICLE 6. IMPROVEMENTS (RESERVED)****ARTICLE 7. SPECIAL LEASING PROVISIONS****R12-5-701. Repealed****Historical Note**

Adopted effective May 28, 1981 (Supp. 81-3). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-701 renumbered from Section R12-5-150 (Supp. 93-3). Section repealed by summary action with an interim effective date of February 4, 2000; filed in the Office of the Secretary of State January 11, 2000 (Supp. 00-1). Interim effective date of February 4, 2000 now the permanent effective date; filed in the Office of the Secretary of State August 1, 2000 (Supp. 00-3).

**R12-5-702. Agricultural Leases**

- A. Land subject to agricultural lease; term of lease
  1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.

- a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.
- B. Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.
- C. Application for agricultural lease
  1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state lands.
    - a. Each application shall be limited to the lands in one section or part thereof.
- D. Rental rates; appraisal
  1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than \$1.00 per acre per annum.
  2. Minimum rental for each agricultural lease shall be \$10.00 per annum; provided, however, that the minimum rental of \$10.00 per annum shall apply to each section or portion thereof covered by the lease.
- E. Number of leases issued on farm unit
  1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural lands within the lessee's farm unit.
    - a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.
      - i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.
      - ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.
- F. Agricultural lease form; provisions. Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.
- G. Sequence of development and improvement of lands under agricultural development lease
  1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.
  2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved until after the acquisition of such water supply has been accomplished or assured and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.
  3. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply



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with the requirements of the Commissioner, the Commissioner may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.

- H.** Application for renewal; right of renewal; developmental lease
1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
    - a. A separate application form shall be submitted for each section of land or portion thereof within the lease.
    - b. The filing fee for each application shall be the same as for an initial application.
  2. A preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not acquired a water supply deemed by the Commissioner to be adequate.
  3. Proper diligence on the part of the lessee toward complete agricultural subjugation and development of the land under lease shall be the measure for the Commissioner's determination as to whether renewal of an agricultural development lease is in the best interests of the State.
- I.** Application to assign lease
1. Application to assign and application for assumption of lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
    - a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.

**Historical Note**

Original rule, Art. III, Subchapter B, Ch. II (Supp. 76-4).  
Amended by emergency action effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Section R12-5-702 renumbered from Section R12-5-151 (Supp. 93-3).

**R12-5-703. Commercial Leases**

- A.** Scope of commercial leasing rules. An applicant for a commercial lease shall be subject to the general leasing rules enumerated, *supra*. Such applicant shall also be subject to the commercial leasing rules set out, *infra*. In a commercial leasing situation where the general leasing rules and the commercial leasing rules conflict, the latter rules shall be controlling.
- B.** Lands subject to commercial lease. All state lands classified as suitable for commercial purposes are subject to a commercial lease. Unless it is deemed to be for the best interests of the state, it is not the policy of the State Land Department to allow and issue commercial leases which will seriously interfere with, damage, or break up operations of an established ranch or farm unit. There is no limit to the amount of commercial land that may be leased to any one individual, corporation, partnership or association.
- C.** Term of commercial lease. State lands suitable for commercial purposes may be leased for a period of not more than ten years without advertising, or subject to such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interests of the state.
- D.** Applications to lease state lands not classified as commercial. Applications to lease lands not classified as commercial shall be accompanied by a petition for reclassification as provided by the general leasing rules.
- E.** Application for commercial lease; application for commercial lease renewal. All applications for commercial leases and all applications for renewal of commercial leases shall be made on such form or forms as may from time to time be prescribed by the Commissioner and provided by the Commissioner. A commercial lease before the time of execution or renewal will be subject to the provisions and supplemental conditions and restrictions as may be added thereto and the provisions of law and these rules.
- F.** Additional conditions for commercial leases.
1. Unless otherwise directed by the Commissioner in writing, the lessee shall:
    - a. Notify the Commissioner in writing as to the number of any license issued by the state Tax Commission of Arizona to the lessee, any sublessee, any concessionaire or any assignee; such notice shall also include the exact name in which license is issued.
    - b. Keep and maintain an accounting system satisfactory to the Commissioner.
    - c. Allow access to accounting records during business hours where the same are kept for the purpose of inspecting and auditing the same.
    - d. File with the Commissioner, if requested by the Commissioner, a statement of the total gross sales made for the period specified. Unless otherwise directed by the Commissioner, this report may be made by filing with the Commissioner the requested information on the form used by the state Tax Commission.
    - e. Acquire consent in writing from the Commissioner for any improvements made on the site.
    - f. Acquire consent in writing for moving buildings from other premises onto the leased premises. All buildings and structures shall be of acceptable construction.
    - g. Keep any gas, electric, power, telephone, water, sewer, cable television and other utility or service lines under ground unless prohibited by law.
    - h. File with the Commissioner, prior to the approval of any application to place improvements, plans and specifications showing the nature, location, cost, quality of proposed material, size, area, height, color, shape and design of the proposed improvements. The Commissioner may also require a perimeter survey of the leased premises upon which shall be shown the location of the completed improvements. The lessee shall also submit grading plans.
  2. The above conditions shall apply to any assignee, sublessee or concessionaire of the original lessee.
- G.** Maps required as part of application for commercial lease. The applicant shall furnish such information map of the lands to be leased as the Commissioner may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition, the Commissioner may require an aerial photograph or photographs of such lands as he may specify in a request therefor.
- H.** Minimum rental rates for commercial leases. No commercial lease shall provide for an annual rental of less than the appraised rental value of the land and in no event shall the rent be less than 5¢ per acre per annum or less than \$10.00 per annum per lease.
- I.** Division of leases. The State Land Commissioner may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject lands or would result in separating one commercial use

from another. The rent for the lease year in which such division is made shall be allocated to the separate leases.

- J. Sublease of commercial lease by lessee. No commercial lessee shall sublet his lease without the written permission of the Commissioner. Approval of a sublease may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease, with the Commissioner's approval and any limitation to such approval endorsed by the Commissioner thereon will be returned to the lessee, one copy thereof being retained in the files of the Department.
- K. Application to assign lease. Application to assign and application for assumption of lease and transfer shall be made upon such forms as may from time to time be prescribed by the Commissioner; upon the approval of the application, the action taken by the Commissioner will be noted upon the lease and made of record in the Department.
- L. Use of state lands; failure to use. No lessee or permittee shall use lands under permit or lease except for the uses and purposes specifically set forth in the lease or other such uses or purposes as may be subsequently authorized by the Commissioner in writing.
- M. Rights of commercial lessee or permittee. All leases or permits granted by the Commissioner are only a license or permit to use the land described in the lease or permit for commercial purposes in a manner compatible with the terms of said lease or permit. The state of Arizona reserves the right to grant other leases or permits for the use of said lands or the removal of natural products therefrom.  
No lessee or permittee has the authority or right to issue any person any right to the use of said land or the removal of any products therefrom, but such right to use vests solely in the Commissioner and must be granted by the Commissioner in writing.

#### Historical Note

Original rule, Art. V, Subchapter B, Ch. II (Supp. 76-4).

Amended by adding subsection (N) as an emergency effective January 9, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired.

Readopted without change as an emergency effective June 16, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Section R12-5-703 renumbered from Section R12-5-152 (Supp. 93-3).

#### R12-5-704. Expired

#### Historical Note

No original number assigned (Supp. 76-4). Section R12-5-704 renumbered from Section R12-5-153 (Supp. 93-3).

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-705. Grazing Leases

- A. Definitions. Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit:
  1. "Grazing lands" means lands which can be used only for the ranging of animals.
  2. "Carrying capacity" or "average annual carrying capacity" means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.

3. "A section of land" for appraisal of carrying capacity purposes means an area of land consisting of 640 acres.
  4. "Animal unit" means one weaned beef animal over six months of age, or one horse, five goats, or five sheep, or the equivalent thereof.
  5. "Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, as determined by the Bureau of Agricultural Economics, United States Department of Agriculture, and, if that service is not available, from such sources as the Commissioner determines best to establish said price.
- B. Qualifications to leasing grazing lands. Any person of the age of 21 years or over, a citizen of the United States, or who has declared an intention to become a citizen of the United States, or any firm, association or corporation which has complied with the laws of the state, shall be qualified to lease state land for grazing purposes.
  - C. Applications for grazing lease and renewals. Application for a grazing lease shall be made upon Land Division form and an application for renewal thereof shall be made upon Land Division form in accordance with the general rules and regulations relating to the leasing of state lands. Only one section or subdivision thereof may be applied for on one application for an initial lease. Application for renewal of an existing lease may include an entire ranch unit or any part thereof; provided, however, the filing fees must be paid in the same manner as in the original application.  
An applicant for an initial lease shall fill out the form in complete detail. An applicant for a renewal of an existing lease, if he has an up-to-date and current statement of his holdings within the ranch unit used in connection with the lands sought to be leased, will not be required to fill out in detail answers to questions concerning his holdings appearing on the applicant form.
  - D. Land subject to grazing lease and term of lease. All state lands classified as grazing lands, not under lease, are subject to grazing lease for a period of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. It is the policy of the Department not to offer open land for lease within an established ranch unit without first offering said lands to the owner or the person having control of the lands in such ranch unit. There is no limit to the amount of grazing land that may be leased to any one individual, corporation, partnership or association.
  - E. Application to lease lands not classified as grazing. Applications to lease lands not classified as grazing shall be accompanied by a petition for reclassification as provided by the general rules and regulations relating to the leasing of state lands.
  - F. Rental rates of grazing land; appraisal. No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of \$2.50 per annum per lease, said minimum of \$2.50 per annum per lease applying to one section or portion thereof.  
The Commissioner shall appraise all grazing land on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount found by multiplying the carrying capacity of the lands by the annual rental rate per animal unit. The annual rental rate per animal unit shall be 22% of the average market price of beef for the preceding year. The annual carrying capacity is determined by a field appraisal by the

Department, and the basis for said appraisal is the average carrying capacity of the land over a ten-year period. Notice of the appraised rental of the land will be contained in the annual billing statement which will be sent to the lessee by registered mail unless he has previously signified his acceptance of said carrying capacity together with the Commissioner's final decision regarding the appraised rental. Prevailing annual rental schedules will be published annually and furnished each lessee at the time of mailing the notice of appraised rental.

An appeal from any final decision of the Commissioner relating to the appraisal of lands may be taken to the Board of Appeals as provided in the general rules and regulations relating to state lands.

- G. Number of leases issued on ranch unit. Leases issued by the Department will include all state grazing lands within the ranch unit in one lease unless a hardship results therefrom to the lessee, in which case the lessee may at his election divide the state lands in his ranch unit in not more than four separate leases in such a manner that lease rentals will not become due and payable at the same time but will be payable on an approximate quarterly or semi-annual basis. To divide a ranch unit it is necessary for the lessee to apply in writing or in person to the Department, supplying sufficient information in order that a division of the state lands in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state lands in a ranch unit being issued, additional leases may be issued with different dates of payment of rentals.
- H. Form of grazing lease and provisions thereof. The form of grazing lease offered by the Department to an applicant will be on Land Division form No. A-11 and will be subject to the provisions and supplemental conditions therein contained and such other conditions as may be added thereto and the provisions of law and these rules and regulations.
- I. Rights of grazing lessee. All grazing leases granted by the Commissioner are only a license to graze livestock and to use the land described in the lease in a manner compatible with the terms of the lease. The state of Arizona reserves the right to grant other forms of leases or permits for the use of said lands or the removal of natural products therefrom. No grazing lessee has the authority or right to issue to any person any rights to the use of said lands or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
- J. Sublease or pasturage agreement. No grazing lessee shall sublet his lease, sell or lease pasturage of lands embraced in his lease without the written permission of the Commissioner. Approval of a sublease or pasturage agreement may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease or pasturage agreement executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease or pasturage agreement, with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon, will be returned to the lessee, one copy thereof being retained in the files of the Department.
- K. Carrying capacity and application to exceed the same. No grazing lessee, sublessee or users under a pasturage agreement shall graze, without permission of the Commissioner, in excess of 110% of the carrying capacity as previously determined by the Commissioner upon state lands under lease within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. Approval to exceed the carrying capacity may be obtained by submitting a written request therefor. The request should contain the number of head of animals the lessee, sublessee or user desires to place

upon the leased lands in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased lands. If the Commissioner approves said request, the lessee, sublessee or user will be notified of such approval of increase in the carrying capacity and the period granted therefor. In the event of the approval of any such excess the Commissioner shall assess and collect the rental for such excess as provided by law and these rules and regulations.

- L. Cultivation and growing of crops on grazing land. State land under grazing lease is limited to the ranging of animals only and may be cultivated and crops grown thereon only with the approval of the Commissioner. Upon approval of the Commissioner the land may be cultivated and crops grown thereon provided such crops are forage crops in nature that are pastured by animals or, if severed from the land, are fed to animals upon the ranch unit. Under no circumstances may the lessee grow crops commercially under the provisions of a grazing lease. In the event any crops are grown with the approval of the Commissioner which will be pastured or removed from the land for use at other times of the year upon the ranch unit, the carrying capacity will be adjusted in accordance with the forage crops grown.
- M. Cutting of timber, standing trees or posts. The lessee shall not cut or waste, nor allow to be cut or wasted, any timber or standing trees growing on the leased land without the written consent of the Commissioner, except for fuel for domestic uses or for the necessary improvements upon the land; provided, however, that nothing herein contained shall be construed to permit the cutting of saw timber for any purpose except with the written consent of the Commissioner.  
Posts cut primarily from cedar, mesquite and juniper trees may be used for the erection and use of improvements by the lessee upon state lands without cost, provided the written consent of the Commissioner is first obtained. Such posts may not be used on other than state lands without payment therefor. The lessee is required to file an affidavit with the Department indicating the number of posts cut, the number used for improvement of state land and the number used on other than state lands or stockpiled for future use. At the time approval to cut posts is granted by the Commissioner, the price will be determined by him, which will be comparable to the price of posts from the United States Forest Service, and the price will be payable at the time the affidavit indicating the number of posts cut is filed with the Department. The Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time visit the lessee to determine the number of posts cut. The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing lands is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state lands.  
In the event the lessee does not desire to purchase the trees as above provided, the Commissioner, if he deems it for the best interest of the state, may sell the same under such terms and conditions that he may require.  
A purchaser other than a lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the land under lease to him and may be required to file a surety bond with the Commissioner in such amount and under such conditions as to indemnify the lessee for any damage which may result due to his removal of the trees.
- N. Application to assign lease. Applications to assign and application for assumption of lease and transfer shall be made upon Land Division form No. A-13-1 and in accordance with the general rules and regulations relating to the leasing of state

lands. Upon approval of the application, the assignment of the lease will be made by the Commissioner upon the lease where indicated and made of record in the Department.

- O.** Use of state lands; failure to use. No lessee or permittee shall use lands under lease or permit to him except for grazing purposes unless authorized by the Commissioner in writing. Applications for a special use of lands under permit or lease to a lessee or permittee for purposes other than grazing shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department. Failure of any lessee or permittee to use the land for the purposes for which he holds a lease or permit, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease or permit to forfeiture or to cancellation as provided by law and these rules and regulations.
- P.** Posting to prohibit hunting and fishing on state land. State land under lease or permit may not be posted to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

#### Historical Note

Original rule, Art. II, Subchapter B, Ch. II (Supp. 76-4).  
Amended effective September 26, 1978 (Supp. 78-5).  
Section R12-5-705 renumbered from Section R12-5-154 (Supp. 93-3).

#### R12-5-706. Expired

#### Historical Note

Original rule, Art. IV, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-706 renumbered from Section R12-5-155 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

### ARTICLE 8. RIGHTS-OF-WAY

#### R12-5-801. Rights-of-way

##### A. Definitions

1. "Commissioner" means State Land Commissioner.
2. "Department" means State Land Department.
3. "Right-of-way" for the purpose of these rules means a right of use and passage over or through state land for such purpose as the Commissioner may deem necessary.
4. "Lease" means any lease on state land in existence at the time applicant applies for right-of-way, or granted thereafter for either surface or subsurface use.
5. "Patent" means a document used by the State Land Department to convey title to land.
6. "Site" means a reservoir for storage of water; a location for a dam, a power plant or an irrigation plant, and for other purposes for public uses. (Not to include workings for the removal of sand, gravel and other road materials.)

##### B. Miscellaneous rules

1. Scope. These rules and regulations are general rules implementing Article 10, Title 37-461, Arizona Revised Statutes, providing for grants of rights-of-way and sites for public purposes, and shall prevail over and supersede any existing policy or procedure of the Department to the extent that they are in conflict therewith.
2. State land subject to application. Any state-owned land shall be subject to application, provided that the proposed

use does not unalterably conflict with other existing rights.

##### C. Application for right-of-way

###### 1. Qualifications of applicant

- a. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and who are authorized to transact business in the state, and any governmental agency of the state or political subdivision and municipal corporations thereof, may apply to the Department for a right-of-way on, over or through state land.
- b. Application for right-of-way shall be made upon forms provided by the State Land Department.

###### 2. Area covered by application and right-of-way. Separate application shall be made for each county crossed. Data for each section will be shown separately.

###### 3. Information to be furnished by the applicant

- a. The application for a right-of-way shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or by an authorized agent for the applicant, and shall be required to furnish the Department the following information as the Commissioner may prescribe.
  - i. Name and address of applicant.
  - ii. Statement whether applicant is an individual, partnership or corporation, or governmental agency of the state or political subdivision and municipal corporation thereof.
  - iii. Statement of citizenship, when applicable.
  - iv. If a corporation:
    - (1) Name.
    - (2) State of incorporation.
    - (3) Arizona business address.
    - (4) Affirmation of authority to do business in Arizona.
  - v. Age and marital status, when applicable.
  - vi. Description, according to the public land survey of the land for which application is being made.
  - vii. Width of the right-of-way.
  - viii. The nature of the right-of-way (the right-of-way is temporary or permanent; the right-of-way requires exclusive use or to what extent; a right-of-way through a given area).
  - ix. A survey of the land for which application is being made showing distance and direction from a known cadastral survey point in each section.
  - x. Location of improvements or crops on land under application over which proposed routes of right-of-way will pass (information required in (ix) and (x) shall be conveyed by means of accurate plat or drawing accompanying the application form).
  - xi. The applicant shall furnish evidence from surface lessee and all other right holders in the land applied for giving consent to the new right-of-way or objection thereto.
- b. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information as the Commissioner may deem necessary.

###### 4. Rights of surface and subsurface lessees or permittees

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- a. The Commissioner has the right to grant rights-of-way without the consent of the surface or subsurface lessee.
    - b. When the applicant for a right-of-way and any existing right holder do not agree on the appraised value of damages to the right holder, the applicant for right-of-way may apply to the Commissioner to appraise the value of any improvements that may be injured or damaged. The cost of any such appraisal shall be paid by the applicant for right-of-way.
    - c. In cases where to utilize the right-of-way applied for, it is necessary to cut a fence belonging to the surface lessee or otherwise enter through a fence, the installation of a standard cattle guard or other facilities in accordance with such specifications as the Commissioner may prescribe, may be required by the Commissioner as a condition to the granting of the right-of-way.
  5. Filing application for right-of-way; fees; rejection; withdrawal
    - a. Each application filed with the Department shall be accompanied by a filing fee.
    - b. Each application filed shall first be checked for its completeness and when it meets the requirements shall be made of record in the Department.
    - c. Rental or other payment for each right-of-way shall be determined by the Commissioner after appraisal.
      - i. Rental for rights-of-way granted without public auction sale shall be determined by the Commissioner after appraisal.
      - ii. Rights-of-way for exclusive use or perpetual in nature (except rights-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of state land after appraisal.
      - iii. Rights-of-way for governmental agencies of the state or political subdivisions and municipal corporations thereof may be granted by the Department for an indefinite period for so long as used for the purpose granted after full payment of the appraised value of the right-of-way has been made to the State Land Department.
        - (1) All appraisals of rights-of-way shall be established by the State Land Commissioner.
        - (2) The appraised value of the right-of-way shall be determined in accordance with the principles established in A.R.S. §§ 12-1122 and 37-132.
  6. Right of applicant to use of land
    - a. The filing of an application for a right-of-way shall not confer upon the applicant any right to use the area applied for.
    - b. A right of entry to map and survey or for any other purpose in the area to be applied for may be obtained from the Commissioner on forms provided by the Department.
  7. Termination of use; abandonment
    - a. When a right-of-way holder has no further use of the area, he may surrender the contract to the Commissioner.
    - b. The Commissioner may determine that a right-of-way is abandoned when the proper showing is made that the area under right-of-way is no longer needed or used for the purpose applied for.
  - c. The Commissioner shall give right-of-way holder 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way holder fails to correct the defect, the Commissioner may issue an order of abandonment.
  8. Issuance of a right-of-way
    - a. Upon the compliance by the applicant with the requirements set forth by the Commissioner, the right-of-way contract shall be issued.
    - b. The failure of the applicant to execute and return the right-of-way contract with all monies required within 60 days from the date of mailing by the Department, the Commissioner may issue a cancellation order for non-completion of the contract.
    - c. The date of the right-of-way contract shall commence on the date the contract is mailed by the Department to the applicant.
- D. Right-of-way**
1. Term of right-of-way. The term of the right-of-way shall be determined by the Department and shall be set forth on the right-of-way contract.
  2. Right-of-way rentals or other payments. The rental or any other payments required for rights-of-way shall be determined by the Commissioner after appraisal.
  3. Possession and right of use of right-of-way area. The right is granted for the use of the area described in the right-of-way contract subject to any existing prior rights and subject to any rights the Department shall grant hereafter.
  4. Provisions of the right-of-way
    - a. Every right-of-way contract shall provide for:
      - i. Payment to the Department of the amount established by the Commissioner after determination of the true appraised value.
      - ii. The installation and construction of necessary machinery, equipment and facilities with the right of removal within 90 days after expiration or termination of the right-of-way.
      - iii. Fencing and other protective requirements deemed necessary by the Commissioner.
      - iv. That the grantee shall restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner.
      - v. That the grantee will indemnify, hold and save grantor harmless against all loss, damage, liability, expenses, costs and charges incident to or resulting in any way from the use, condition or occupation of the land.
      - vi. A statement of the purpose for which the right-of-way was granted.
      - vii. The right of the grantee to assign the right-of-way, provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.
      - viii. The right of termination of the right-of-way by the grantee at any time during its term by giving the Commissioner 30 days notice of termination in writing, provided that the grantee is not delinquent in any payments and has complied with all conditions on the date of termination.
  5. Assignment of right-of-way; sublease prohibited
    - a. Grantee of each right-of-way contract, if not in default of rental or other payments, and who has

- kept and performed all the conditions of his lease, may, with written approval of the Commissioner, assign the right-of-way.
- i. Application for assignment, the assignment and the assumption of the right-of-way will be on such forms as the Commissioner may prescribe.
  - ii. An assignment shall not become effective unless and until it is approved by the Commissioner.
  - iii. The assignee shall succeed to all the rights and shall be subject to the obligations of the assignor.
  - iv. A sub-grant of the right-of-way contract is prohibited.
6. Right-of-way renewal. Upon application to the Commissioner, not less than 30 days, nor more than 60 days prior to the expiration of the right-of-way contract, the grantee of a right-of-way contract, if he is not delinquent in the payment of rental or of monies due the State Land Department on the date of expiration of the contract, shall have a preferred right to renew the right-of-way contract bearing even date with the expiration of the old contract.
  7. Bonds
    - a. The Commissioner may require the grantee to post a cash deposit or surety bond to guarantee the payment of all monies due under the contract.
    - b. The Commissioner may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the grantee will guarantee restoration of the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.
    - c. The Commissioner may require the lessee to file with the Department a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the state land covered by the right-of-way, for any loss to such owner or lessee from damage or destruction caused by the construction or use of the right-of-way, his or its agents, or employees, to grasses, forage, crops and improvements upon such land.
    - d. Assignment of any or all of the right-of-way contract will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under bond may be effected through the posting of a replacement bond by the assignee, but then only after approval by the Commissioner and subsequent notification of the release by the Commissioner in writing to the principal and surety.
    - e. The Commissioner, in his discretion, may reduce or increase the principal amount of the bond.
    - f. Immediately after determination by the Commissioner that full discharge of the conditions of the obligations under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
    - g. Surety on the bond shall have the right to cancel the bond and be relieved of further liability after the period of notice, by giving 30 days' notice to the Department of its desire to so cancel.
      - i. Upon receipt of such notification, the Department will immediately notify the grantee by certified mail of the impending action by surety.
      - ii. Failure by the grantee to post a replacement bond before the expiration of the 30 days mentioned next above, shall constitute a default by the grantee and cause for cancellation of the right-of-way.
  8. Principal payments. Each right-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof for exclusive use or perpetual use shall provide for payment of principal in the full amount of the appraised value as provided by the Commissioner after appraisal.
- E. Reports**
1. Report of improvements
    - a. Applications for and reports of improvements placed shall be presented to the Commissioner on forms provided by the Department.
    - b. Grantee of every right-of-way shall submit to the Department an application to place any improvement to be placed on the right-of-way and shall secure written approval from the Commissioner to place the improvement before any work is commenced toward the improvement.
    - c. The grantee shall report any completed improvements to the Commissioner and secure approval from the Commissioner.

#### Historical Note

Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

#### R12-5-802. Reservoir, Dam, and Other Sites

##### A. Definitions

1. "Site lease" shall mean a lease issued upon state lands by the Department for reservoir or dam sites primarily used for purposes other than stock watering on lands leased for grazing purposes, and power or irrigation plant sites requiring more width than general rights-of-way leases for transmission lines or canals, or for such other purposes not classified as commercial.
2. "Surface lessee" means the holder of a lease on the surface of any state land for grazing, agricultural, commercial, homesite or natural products.
3. "Subsurface lessee" means the holder of a lease on the subsurface of any state land for oil and gas, mineral or natural products.

##### B. Land subject to site lease and term of lease. All state lands are subject to site lease for a term of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. Site leases in excess of ten years are required by law to be advertised and sold at public auction to the highest bidder.

No lease for a site will be granted where damage or injury to improvements owned by a surface or subsurface leaseholder would result from the granting of the site by the Department without giving rise to a cause of action by the owner of said improvements, unless compensation for the value or damage or injury to said improvements has first been determined and a settlement made.

##### C. Application for site lease. An application for a site lease shall be made upon Land Division form No. A-82, and in accordance with the general rules and regulations relating to the leasing of state lands.

The application shall be accompanied by a map showing in detail the survey of the site applied for, or, if not surveyed, a map of reasonable accuracy so that the site may be located

upon the land itself by either a survey or protraction. The Commissioner reserves the right to require a survey to be made by a regularly licensed registered engineer or land surveyor at any time. The map need be of no particular scale but should be of sufficiently large enough scale that improvements upon the surface of the land applied for may be shown. The map is considered a part of the application to lease as a line of definite location which will bind the applicant in the same manner as the lease application itself to the statements made therein.

An application for a site lease over or across state lands, the surface or subsurface of which is leased and in use, should be accompanied by a statement from such surface or subsurface lessee that he has no objection to the granting of the site lease, or, if such consent cannot be obtained, a statement from the applicant stating the reasons why such consent has not been obtained.

- D.** Renewal application for site lease. Application for renewal of a site lease shall be made upon Land Division form No. A-13-3 and in accordance with the general rules and regulations relating to state lands.

If the applicant has not used the land for the purpose for which the initial lease was granted to him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and the rules and regulations of the Department.

- E.** Rights of surface and subsurface lessees. Under the law the Commissioner has the right to grant sites without the consent of the surface or subsurface lessee. However, in many instances the surface or subsurface lessee owns improvements upon the lands desired for a site lease and these improvements are protected by law. In the event the site applicant and the surface or subsurface lessee are unable to arrive at the value of any improvements which may be injured or damaged by the grant of a site lease and the consent of the surface or subsurface lessee cannot be secured, the Commissioner may, if it is to the best interest of the state, appraise the improvements as provided by law and grant the lease upon evidence of tender to the owner of improvements of the appraised value of the same. The owner of the improvements may appeal from the appraisal of the improvements to the Appeal Board of the Department as authorized by law and these rules and regulations.
- F.** Rental. No site lease shall provide for an annual rental of less than the appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per lease.
- G.** Form of site lease and provisions thereof. The form of site lease offered by the Department to an applicant will be on Land Division form No. A-83 and will be subject to the provisions and supplemental conditions therein contained, and such other conditions as may be added thereto, and the provisions of law and these rules and regulations.
- H.** Effect of a site lease. No lessee shall use lands under lease to him except for site purposes unless authorized by the Commissioner in writing.

Applications for a special use of lands under lease to a lessee for purposes other than which the lease was issued shall be made in writing in triplicate and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.

Failure of any lessee to use the land for the purposes for which he holds a lease, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease to forfeiture or to cancellation as provided by law and these rules and regulations.

- I.** Rights of site lessee. All leases granted by the Commissioner are only a license to use the land described in the lease for site purposes in a manner compatible with the terms of said lease. The state reserves the right to grant other leases for the use of said lands or the renewal of natural products therefrom. No site lessee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

#### Historical Note

Original rule, Art. X, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-802 renumbered from Section R12-5-166 (Supp. 93-3).

#### R12-5-803. Expired

#### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section R12-5-803 renumbered from Section R12-5-167 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

### ARTICLE 9. EXCHANGES

#### R12-5-901. Scope of Rules

These rules apply only to exchange of state land under the provisions of A.R.S. §§ 37-604 to 37-608, inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

#### Historical Note

No original number assigned (Supp. 76-4). Section R12-5-901 renumbered from Section R12-5-179 (Supp. 93-3). R12-5-901 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-901 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

#### R12-5-902. Definitions

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.
3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. "Department" means the State Land Department.

#### Historical Note

No original number assigned (Supp. 76-4). Section R12-5-902 renumbered from Section R12-5-180 (Supp. 93-3).

R12-5-902 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-902 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

**R12-5-903. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-903 renumbered from Section R12-5-181 (Supp. 93-3). R12-5-903 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-903 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-904. Application**

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following: the name, age, and residence of the applicant; a description of all lands sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the leaseholder or owner of improvements on the lands to be exchanged shall be attached to the application and filed therewith.

**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-904 renumbered from Section R12-5-182 (Supp. 93-3). R12-5-904 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-904 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

**R12-5-905. Expired****Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section

R12-5-905 renumbered from Section R12-5-183 (Supp. 93-3). R12-5-905 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-905 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-906. Expired****Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section R12-5-906 renumbered from Section R12-5-184 (Supp. 93-3). R12-5-906 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-906 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-907. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-907 renumbered from Section R12-5-185 (Supp. 93-3). R12-5-907 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-907 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-908. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-908 renumbered from Section R12-5-186 (Supp. 93-3). R12-5-908 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-908 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-909. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-909 renumbered from Section R12-5-187 (Supp. 93-3). R12-5-909 repealed by summary action with an interim



effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-909 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-910. Maps and Photographs**

The applicant shall furnish such map or maps of the lands to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such lands as it may specify in a request therefor.

**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-910 renumbered from Section R12-5-188 (Supp. 93-3). R12-5-910 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-910 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

**R12-5-911. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-911 renumbered from Section R12-5-189 (Supp. 93-3). R12-5-911 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-911 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-912. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-912 renumbered from Section R12-5-190 (Supp. 93-3). R12-5-912 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-912 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-913. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-913 renumbered from Section R12-5-191 (Supp. 93-3). R12-5-913 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the

Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-913 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-914. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-914 renumbered from Section R12-5-192 (Supp. 93-3). R12-5-914 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-914 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-915. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-915 renumbered from Section R12-5-193 (Supp. 93-3). R12-5-915 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-915 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-916. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-916 renumbered from Section R12-5-194 (Supp. 93-3). R12-5-916 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-916 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-917. Expired****Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-917 renumbered from Section R12-5-195 (Supp. 93-3). R12-5-917 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-917 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp.

98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### **R12-5-918. Controversy as to Title or Leasehold Rights**

The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

##### **Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-918 renumbered from Section R12-5-196 (Supp. 93-3) R12-5-918 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-918 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

#### **R12-5-919. Expired**

##### **Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-919 renumbered from Section R12-5-197 (Supp. 93-3). R12-5-919 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-919 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### **R12-5-920. Expired**

##### **Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-920 renumbered from Section R12-5-198 (Supp. 93-3). R12-5-920 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-920 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### **R12-5-921. Exchange of Road Rights-of-way over State Land**

- A.** Scope of rules. These rules apply only to exchange of road rights-of-way over state land under the provisions of A.R.S. §§ 37-615 to 37-617, inclusive and shall prevail over the supersede any existing policy or procedure to the extent that they are in conflict therewith. Such additional requirements may be imposed as the State Land Department from time to time determines to be necessary.
- B.** Definitions. Unless the context otherwise requires:
  1. "Commissioner" means the State Land Commissioner.
  2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.

3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. "Department" means the State Land Department.
- C.** Application. The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following:
  1. The name, age and residence of the applicant;
  2. A description of all road rights-of-way sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the road rights-of-way on the ground;
  3. The number of acres contained in the road rights-of-way of the applicant offered in exchange and applicant's estimated value thereof;
  4. The number of acres contained in the state road rights-of-way applied for in exchange and applicant's estimated value thereof;
  5. A list of permanent improvements on the road rights-of-way to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground;
  6. A description of any leasehold interest in the road rights-of-way to be exchanged or ownership of any improvements thereon together with the name and address of any such claimant;
  7. Accompanying agreements, if any, with the leaseholder or owner of improvements on the road rights-of-way to be exchanged shall be attached to the application and filed therewith.
- D.** Appraisal fee. The cost of appraising the value of the privately owned road rights-of-way to be exchanged shall be paid solely by such applicant in such manner and at such time as the Department may direct. The applicant shall pay to the Department the sum of \$150.00 as an initial deposit toward such cost of appraisal; from time to time thereafter, upon the determination by the Department that such cost will exceed the amount of the initial deposit the Department will mail to applicant a written statement of the additional amount due and payment shall be made by applicant to the Department within 20 days from the date the notice is received.
- E.** Valuation of land. All road rights-of-way exchanged shall be of substantially equal value. The Department shall appraise the values of all road rights-of-way described in the application to establish the full cash value thereof, giving due regard to the last established full cash value for state ad valorem tax purposes. Whether or not the selected state road rights-of-way to be exchanged and the private road rights-of-way being offered are of substantially equal value shall be a determination of the Department and such determination shall be final.
- F.** Maps and photographs. The applicant shall furnish maps of the road rights-of-way to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require aerial photographs of such road rights-of-way as it may specify in a request therefor.
- G.** Notices. All notices shall be by regular mail to the last known address of a party in the Department's records and shall con-

clusively be deemed to have been received on the day following the deposit of such notice in the U.S. Mail by the Department.

- H. Road rights-of-way conveyed to the state. Road rights-of-way conveyed to the state shall upon acceptance and recording be dedicated to the same purpose and administered under the same laws to which the road rights-of-way conveyed were subject prior to such conveyance, but may be reclassified as provided in A.R.S. § 37-212.
- I. Conveyance. The form and substance of all instruments of conveyance of the rights-of-way to be granted pursuant hereto shall be as determined by the Department. An applicant may be required to furnish the Department with evidence satisfactory to it that the applicant can convey to the state of Arizona the offered road rights-of-way owned or held subject only to easements or rights consistent with the Department's use of such road rights-of-way as the Department may specify. The Department may in its absolute discretion accept a policy or contract of insurance insuring the state of Arizona in an amount specified by the Department against such loss which the state of Arizona may sustain by reason of the unmarketability of the title to the road rights-of-way agreed to be conveyed to it; however, the acceptance by the Department of any such policy or contract of insurance shall not in any event be considered as a waiver of the obligation of the applicant to convey to the state of Arizona except as may be specifically modified in writing by the Department.
- J. Controversy as to rights. The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that the rights in any of the road rights-of-way offered are in controversy. The Department will not become a party to any controversy between different claimants to any of the road rights-of-way sought to be exchanged.
- K. Judicial notice. The Department may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge; and the Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of any information and evidence submitted to it.
- L. Commissioner's decision. The Commissioner shall render his decision regarding any such protest pursuant to A.R.S. § 37-604.

#### Historical Note

Adopted effective September 22, 1978 (Supp. 78-5).  
Emergency amendment filed September 26, 1990,  
adopted effective September 27, 1990, pursuant to A.R.S.  
41-1026, valid for only 90 days (Supp. 90-3). Emergency  
expired. Section R12-5-921 renumbered from Section  
R12-5-199 (Supp. 93-3).

#### ARTICLE 10. EXPIRED

*Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).*

#### R12-5-1001. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1001 renumbered from Section R12-5-200  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1002. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1002 renumbered from Section R12-5-201  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1003. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1003 renumbered from Section R12-5-202  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1004. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1004 renumbered from Section R12-5-203  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1005. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1005 renumbered from Section R12-5-204  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1006. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1006 renumbered from Section R12-5-205  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1007. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1007 renumbered from Section R12-5-206  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1008. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1008 renumbered from Section R12-5-207  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1009. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1009 renumbered from Section R12-5-208  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

#### R12-5-1010. Expired

##### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1010 renumbered from Section R12-5-209  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-1011. Expired****Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1011 renumbered from Section R12-5-210  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**R12-5-1012. Expired****Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1012 renumbered from Section R12-5-211  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at  
8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

**ARTICLE 11. SPECIAL USE PERMITS****R12-5-1101. Policy; Use of Lands**

It is the policy of the Commissioner in the administration of state lands to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by existing law or the rules and regulations of the Land Division and the leasing of state lands. Permits for such special use will not be issued, however, in any case where the provisions of existing state land laws may be invoked.

The contemplated use must not be in conflict with any federal or state laws.

An applicant must state in his application the use to which he intends to put the lands and he will not be permitted to devote them to any other use unless he secures an additional permit.

1. Qualifications of applicants. Any person of the age of 21 years or over, a citizen of the United States or who has declared an intention to become a citizen of the United States or any firm, association or corporation which has complied with the laws of the state, shall be qualified to apply for a special use permit.
2. Application for special use permit; renewal thereof; application fee. An application for general special use permit shall be made on Land Division form. Such application shall describe with particularity the land applied for, and shall state in detail the use to which the applicant intends to put the lands and the period for such use.  
A renewal of a general special use permit shall be made on Land Division form.  
If an applicant for renewal of a special use permit has not used the land for the purpose for which the initial permit was granted him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and these rules and regulations.
3. Form of special use permit. The form of a general special use permit will be prepared by the Department and will be subject to the provisions and supplemental conditions therein contained and the provisions of law and these rules and regulations.
4. Term of permit. A special use permit shall not be issued for a period to exceed ten years or such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interest of the state.  
An application for an initial special use permit shall not be approved for a period of longer than two years.  
Unless it is deemed to be for the best interest of the state, it is not the policy of the Department to allow and issue a special use permit which will seriously interfere with the operations of an established lessee or permittee holding a

lease or permit from the Department to the surface or sub-surface rights to the land.

5. Minimum fee. No special use permit shall provide for an annual fee for less than appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per permit.
6. Failure to use land for purposes authorized. Any permittee who shall fail to use the land for the purpose for which he holds a permit during the term of his permit, unless for good cause such failure has been authorized or ratified by the Commissioner in writing, may subject his permit to forfeiture or cancellation as provided by law and these rules and regulations.
7. Rights of permittee. All permits granted by the Commissioner are only a license or permit for the use of the land described in the permit for the purpose for which the permit is issued and in a manner compatible with the terms of said permit. The Commissioner reserves the right to grant other permits for the use of said lands for the removal of natural products therefrom. No permittee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
8. Use of state lands. No permittee shall use lands under permit to him except for the purpose for which the permit is issued, unless authorized by the Commissioner in writing.  
Applications for a special use of lands under permit to a permittee for purposes other than which the permit was issued shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications for permit. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the permittee, one copy thereof being retained in the files of the Department. Failure of any permittee to use the land for the purposes for which he holds a permit, without having been authorized to do so by the Commissioner in writing, may, in the discretion of the Commissioner, subject said permit to forfeiture or to the cancellation as provided by law and these rules and regulations.
9. Advertising displays on state lands without permits unauthorized. The erection or maintenance on state lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on state lands, except under authority of a permit issued by the Commissioner as hereinafter provided, shall be deemed a trespasser.
10. Advertising displays defined. The words "advertising displays" as used in this Article shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes but shall not include:
  - a. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;
  - b. Danger, precautionary and information signs erected by officials of the Federal Government or officials of the state or any subdivision thereof, or any non-

- profit organization in the state, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits, and including all civil defense directional signs;
- c. Highway markers or signs relating to any city, town, village or historic place or shrine;
  - d. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;
  - e. Official signs, notices or symbols for the information of aviators, as to location, direction or landings, and conditions affecting safety in aviation;
  - f. Signs containing 16 square feet or less bearing an announcement of any town, village or city, or non-profit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit; providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved;
  - g. Signs erected by Red Cross authorities relating to Red Cross Emergency Station.
11. Applications for advertising display permits. Applications for permits must be executed upon Land Division form No. A-73-3. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size and lighting effect, if any, to enable its substantial production from the description. A sketch showing the location on which the display is to be placed with respect to adjacent physical features should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys.
  12. Fees and rentals for advertising display permits
    - a. A fee of \$1.00 must accompany each application for an advertising display permit.
    - b. The initial and annual charges for advertising displays shall be as follows: not less than 10¢ per annum for each square foot of sign surface and not less than \$2.50 per annum for each display. The amount of the charge, subject to such minima, will be fixed by the Commissioner, which in no event will be less than the appraised rental value for such use.
    - c. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.
    - d. When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.
  13. Form of advertising display permit and terms. Special use permits to erect and maintain advertising displays on state lands may be issued by or under authority of the Commissioner on forms provided by the Department, or, in his discretion, will be issued on Land Division form and will be subject to the provisions and supplemental conditions therein contained and to such other conditions as may be added thereto, and the provisions of law and these rules and regulations. The term thereof shall be for periods of not exceeding ten years and the permits will be revocable in the discretion of the Commissioner at any time.
  14. Renewal of advertising display permits. An advertising display permit issued pursuant to these rules and regulations may be renewed, in the discretion of the Commissioner, upon the filing of an application for renewal not more than 60 nor less than 30 days prior to its expiration.
  15. Identification of authorized advertising displays. Each advertising display erected or maintained under a permit issued pursuant to these rules and regulations shall, for convenient identification, have the serial number of such permit marked or painted thereon.
  16. Unauthorized advertising displays
    - a. Persons who heretofore have erected advertising displays on state lands must either obtain permits to continue such displays, if authorized by these rules and regulations, or must remove the displays as promptly as possible.
    - b. Where an unauthorized advertising display on state land is found, the Commissioner will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected without permission prior to January 1, 1953, must be removed within three months from and after the date of the approval of these rules and regulations, unless application for a permit is made within that period. Displays erected prior to January 1, 1953, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the Commissioner. If the owner fails to remove the display within the time allowed, it may be removed by the Commissioner and the owner will be held liable to the Department for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the Commissioner without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.
  17. Restrictions on advertising displays
    - a. No advertising display shall be permitted which, in the opinion of the Commissioner, would mar the landscape, hide road intersections or crossing, or which, in his opinion, is otherwise objectionable.
    - b. No advertising display shall be affixed to, or painted on any tree or rock situate on state lands or on any other natural object on such lands.
    - c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

#### Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).  
Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1101 renumbered from Section R12-5-241 (Supp. 93-3).

#### ARTICLE 12. REPEALED

**R12-5-1201. Repealed****Historical Note**

Adopted as an emergency effective July 31, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Permanent rule adopted effective November 1, 1984 (Supp. 84-6). Section R12-5-301 repealed, new Section adopted by emergency action and filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original Section placed back into effect December 27, 1990. Section R12-5-1201 renumbered from Section R12-5-301 (Supp. 93-3). R12-5-1201 repealed by summary action with an interim effective date of August 30, 1996; filed in the Office of the Secretary of State August 8, 1996 (Supp. 96-3). Adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996 now the permanent effective date (Supp. 96-4).

**ARTICLE 13. REPEALED****R12-5-1301. Repealed****Historical Note**

Section R12-5-1301 renumbered from Section R12-5-501 (Supp. 93-3). R12-5-1301 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1302. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1601 renumbered from Section R12-5-560 (Supp. 93-3). R12-5-1302 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**ARTICLE 14. REPEALED**

*The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).*

**ARTICLE 15. REPEALED**

*The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).*

**ARTICLE 16. REPEALED****R12-5-1601. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1601 renumbered from Section R12-5-560 (Supp. 93-3). R12-5-1601 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office

of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1602. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1602 renumbered from Section R12-5-561 (Supp. 93-3). R12-5-1602 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1603. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1603 renumbered from Section R12-5-562 (Supp. 93-3). R12-5-1603 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1604. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1604 renumbered from Section R12-5-563 (Supp. 93-3). R12-5-1604 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1605. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1605 renumbered from Section R12-5-564 (Supp. 93-3). R12-5-1605 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1606. Repealed****Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1606 renumbered from Section R12-5-570 (Supp. 93-3). R12-5-1606 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

**R12-5-1607. Repealed****Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1607 renumbered from Section R12-5-571 (Supp. 93-3). R12-5-1607 repealed by summary action with an interim effective date of May 3, 1996; filed in the

Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

#### **R12-5-1608. Repealed**

##### **Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1608 renumbered from Section R12-5-572 (Supp. 93-3). R12-5-1608 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

#### **R12-5-1609. Repealed**

##### **Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1609 renumbered from Section R12-5-573 (Supp. 93-3). R12-5-1609 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

#### **R12-5-1610. Repealed**

##### **Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1610 renumbered from Section R12-5-574 (Supp. 93-3). R12-5-1610 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

#### **R12-5-1611. Repealed**

##### **Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1611 renumbered from Section R12-5-575 (Supp. 93-3). R12-5-1611 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

#### **R12-5-1612. Repealed**

##### **Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1612 renumbered from Section R12-5-576 (Supp. 93-3). R12-5-1612 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

### **ARTICLE 16.1. RENUMBERED**

*Article 16.1, consisting of Sections R12-5-570 thru R12-5-576, renumbered to Article 16, Sections R12-5-1606 thru R12-5-1612 (Supp. 93-3).*

### **ARTICLE 17. NATURAL RESOURCE CONSERVATION DISTRICTS**

#### **R12-5-1701. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1701 renumbered from Section R12-5-600 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1702. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1702 renumbered from Section R12-5-601 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1703. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1703 renumbered from Section R12-5-602 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1704. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1704 renumbered from Section R12-5-603 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1705. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1705 renumbered from Section R12-5-604 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1706. Repealed**

##### **Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1706 renumbered from Section R12-5-605 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

#### **R12-5-1707. Conduct of Hearing**

If a hearing is necessary, it shall be conducted as set out below, unless otherwise specifically provided:

1. All land owners who are electors of the state within the proposed district and all other interested parties may attend such hearing and be heard.
2. The hearing will be presided over by the state Natural Resource Conservation Commissioner or his administrative officer.
3. It will be the duty of the presiding officer to
  - a. Afford to all land owners within the proposed district or district proposed for dissolution and all other interested parties attending the hearing a reasonable opportunity to be heard and to present written statements, papers, maps and any other material or information relevant to the matters under consideration; and,
  - b. Cause full minutes of the proceedings of the hearing to be kept.
4. The presiding officer may be guided by the following order of business. He shall:
  - a. Call the hearing to order.

- b. State the order of business.
  - c. Read the notice of the hearing, and have recorded in the minutes any objections which may be made as to the adequacy of said notice.
5. Explain the purpose of the hearing and provisions of the natural resource conservation districts law relative thereto.
  6. Read the petition and the names of the land owners who have signed it. Any person present may contest the propriety of the petition, the genuineness of any signature thereto, the eligibility of any signer of the petition, and the adequacy of the total number of signers thereto.
  7. State the boundaries of the proposed district or district proposed for dissolution as described in the petition, and as described in the notice of hearing if the descriptions are different and permit discussion of the same in relation to:
    - a. Topography of the proposed district and of the State;
    - b. Composition of soils therein;
    - c. Distribution of erosion;
    - d. Prevailing land-use practices;
    - e. Desirability and necessity of including within the boundaries the particular lands under consideration, and the benefits such lands may receive from being included within such boundaries;
    - f. Relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization; and
    - g. Such other physical, geographical, and economic factors as are relevant, having due regard to the legislative policy set forth in Section 45-2032 of the natural resource conservation districts law.
  8. Throw the hearing open to a general discussion of the desirability of organizing the proposed district or dissolution of a district, and the appropriate boundaries to be given the proposed district. Such general discussion may be preceded by further explanatory statements by experts concerning the problems involved.
  9. Provide for the discussion of such other matters as are in his judgment, relevant to the subject matter of the hearing. State that all interested parties may submit additional written evidence upon the matters considered at the hearing to the Natural Resource Conservation Commissioner within ten days of the final adjournment of the hearing. Adjourn the hearing.
  10. If, after completing the order of business at any hearing, it shall appear to the presiding officer that it may be desirable to include within the proposed district territory outside the area within which notice of the hearing has been given, he will declare the hearing adjourned and will submit to the Commissioner in writing his recommendation that due notice of further hearing be given throughout the entire area considered for inclusion in the district.
  11. After final adjournment of a hearing, the presiding officer will transmit to the state Natural Resource Conservation Commissioner a report which will include:
    - a. A typewritten copy of the minutes of the hearing, together with such written statements, papers, maps, and other relevant material or information as may have been submitted to him;
    - b. A summary of the minutes and of the evidence produced at the hearing, the attitude of the parties present towards the desirability of organizing the district, and the appropriate boundaries for such district; and,
    - c. His recommendation as to whether there is need in the interest of preservation of property, health, safety, and public welfare, for the creation of the district, he will define the boundaries thereof.

**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1707 renumbered from Section R12-5-606 (Supp. 93-3).

**R12-5-1708. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1708 renumbered from Section R12-5-607 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1709. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1709 renumbered from Section R12-5-608 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1710. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1710 renumbered from Section R12-5-609 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1711. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1711 renumbered from Section R12-5-610 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1712. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1712 renumbered from Section R12-5-611 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1713. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1713 renumbered from Section R12-5-612 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1714. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1714 renumbered from Section R12-5-613 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1715. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1715 renumbered from Section R12-5-614 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).



**R12-5-1716. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1716 renumbered from Section R12-5-615 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1717. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1717 renumbered from Section R12-5-616 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1718. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1718 renumbered from Section R12-5-617 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1719. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1719 renumbered from Section R12-5-618 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1720. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1720 renumbered from Section R12-5-619 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1721. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1721 renumbered from Section R12-5-620 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1722. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1722 renumbered from Section R12-5-621 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1723. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1723 renumbered from Section R12-5-622 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**R12-5-1724. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1724 renumbered from Section R12-5-623 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

**ARTICLE 18. MINERAL LEASES****R12-5-1801. Definitions**

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Contiguous" means adjoining and having at least part of one side in common.
3. "Department" means the State Land Department.
4. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of principles and techniques of the science of chemistry as they relate to the search for and the discovery of mineral deposits.
5. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
6. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.
7. "Lessee" means the holder of any lease issued pursuant to the provisions of these rules and regulations and includes the holder of an approved assignment of such lease.
8. "Mineral" means all natural inorganic substances that may be extracted from the earth, and includes mineral compounds and mineral aggregates, natural building stone, saline deposits, and such organic substances as coal and guano, but does not include petroleum and related hydrocarbon gases or other natural gases.
9. "Mining" means extracting mineral from the earth, but shall not include any activity carried on after the mineral has been detached from the earth and has reached the natural or original surface of the earth.
10. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.
11. "Shipping" means the transportation of extracted mineral, after mining, to the place of processing or sale.

**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1801 renumbered from Section R12-5-701 (Supp. 93-3).

**R12-5-1802. Expired****Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1802 renumbered from Section R12-5-702 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

**R12-5-1803. Expired****Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1803 renumbered from Section R12-5-703 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

**R12-5-1804. Expired****Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1804 renumbered from Section R12-5-704 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

**R12-5-1805. Lease for Mineral Claim**

**A.** Term of lease. Every mineral lease of state land shall be for a term of 20 years.

**B.** Lessee's right of possession and enjoyment. Every mineral lease shall confer the right:

1. To extract and ship minerals from the claim located within planes drawn vertically downward through the exterior boundary lines thereof, provided:

a. That in case of each lease of a claim located pursuant to the provisions of subsection (C) of these rules and regulations (Type A claim), the lease shall confer extralateral rights, in the discovery vein only, as follows:

Exclusive right of possession and enjoyment of the vein, lode, or ledge throughout its entire depth, the top or apex of which lies inside the surface lines of the claim extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But the right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of the location, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this subsection shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

a. Proposed routes of ingress and egress over state lands, preferably reflecting agreement on the part of the lessees concerned, shall be subject to final approval by the Commissioner. Construction of roadways shall not be initiated by the mineral claimant or lessee until such approval is had.

**C.** Provisions of mineral lease

1. Every mineral lease of state lands shall provide for:

a. The annual performance of not less than \$100.00 worth of labor or of improvements made upon each claim or group of contiguous claims in common ownership. The annual expenditure shall become due and shall be performed during the year commencing at the expiration of one year from the date of location at 12:00 o'clock meridian and during each year thereafter.

i. The term "labor" shall include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed with the Commissioner which sets forth fully

- (1) the location of the work performed in relation to the point of discovery and boundaries of the claim,
- (2) the nature, extent and cost thereof,
- (3) the basic findings therefrom, and
- (4) the name, address, and professional background of the persons conducting the work.

Such surveys, however, may not be applied as labor for more than two consecutive years or for a total of more than five years on any one mining claim, and each such survey shall be non-repetitive of any previous survey of the same claim.

ii. Improvements mentioned in (A)(1) above shall be limited to those necessary and incident to mining or which develop, or tend to develop, mineral.

iii. Proof of annual labor on each claim shall be filed with the Commissioner, in such form as the Commissioner may prescribe, within 90 days after expiration of the period provided for its performance.

b. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of livestock.

c. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all the monies owing to the state under the terms of the lease have been paid.

d. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.

e. The right of the lessee and his assigns to transfer the lease.

f. Termination of the lease by the Commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right of the lessee to cure the default within a period of not less than 30 days.

Notices of termination shall be mailed to the address of record of the lessee. Such notice shall set forth the default and inform the lessee of the time and place he may appear before the Commissioner to show cause why the lease should be restored to good standing.

g. Termination of the lease by the lessee at any time during its term by giving the Commissioner 30 days' notice of termination in writing; provided, the lessee is not delinquent in the payment of rent or royalty to the date of termination.

**D.** Lease rental. The rental for a lease of a mineral claim on state lands shall be \$15.00 per annum, payable in advance at the time of application for lease and at the beginning of each yearly period thereafter.

**E.** Royalty

1. Every mineral lease of state land shall provide for payment to the state by the lessee of a royalty of 5% of the net value of the minerals produced from the claim. The net value shall be deemed to be the gross value after processing, where processing is necessary for commercial use, less the actual cost of transportation from the place of production to the place of processing, less costs of processing and taxes levied and paid upon the production thereof. In case of minerals not processed for commercial use, the net value shall be the gross proceeds, or gross value, at the place of sale or use, less the actual cost of transportation from the place of production to the place of sale or use, less taxes, if any, levied and paid upon the production thereof.

2. In the case of limestone, silica, shale, and clay manufactured into building materials, the royalty shall be 3¢ per gross short ton of material removed. The 3¢ per ton royalty shall be based upon the average regional wholesale price of the building material so manufactured over the 12-month period immediately preceding June 14, 1958. The royalty shall be adjusted at the end of each five-year period thereafter in direct proportion to the decrease or increase in the five-year average of the average yearly regional prices for such building materials over the preceding five-year period, providing the decrease or increase amounts to 10% or more of the previous base price.
  3. In case of sand, rock and gravel to be used in the construction of roads, buildings or other structures, the royalty shall be 5¢ per cubic yard.
    - a. As used as a basis of classification for royalty purposes, the word "rock" means the granular material coarser than gravel, and usually associated with natural deposits of sand and gravel.
  4. The minimum rental paid for each year shall be credited upon royalties which may become due during the year.
- F.** Assignment of lease. The lessee of each mineral claim, if not in default of rent or royalty, and who has kept and performed all the conditions of his lease, may with the written approval of the Commissioner assign his lease. Application for assignment and assignments will be in such form as the Commissioner may require.
- G.** Renewal. Upon application to the Commissioner, not less than 30 nor more than 60 days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of 20 years.
- H.** Sub-leases. No sub-lease shall be valid without the written permission of the Department.
- I.** Lease, reserved mineral interest; bond
1. Each mineral lease of the state's reserved mineral interest, resulting from sale of state land, shall contain such special conditions and terms as are necessary to the protection of the pertinent patentee or contract purchaser of state lands, or their successors in interest and the state of Arizona, against damage to lands, livestock, water, crops or other tangible improvements on lands held by such patentee or contract purchaser and suffered by the reason of the use or occupation of such land by the lessee.
    - a. Lease applicant will be required to execute a bond in a reasonable principal amount, conditioned upon payment for such damage.
    - b. Failure by lease applicant to post bond within 30 days after notice of such requirement has been served by the Department shall be deemed to constitute forfeiture of right to the lease.

**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).  
 Section R12-5-1805 renumbered from Section R12-5-705  
 (Supp. 93-3).

**R12-5-1806. Records and Reports**

- A.** Annual lease report. An annual report shall be submitted by the lessee of each mineral claim showing any and all work performed, improvements made, the cost thereof, and such other information as the Commissioner may require. The report, covering the mining operation in general, shall be filed with the Commissioner within 90 days after expiration of the period provided for the performance of annual labor, shall be incorpo-

rated with the report of that labor and shall be in such form as the Commissioner may prescribe.

- B.** Monthly production report. A monthly report of production shall be submitted by the lessee of each mineral claim within 15 days after the end of the month in which production is first had and before the 15th of each succeeding month for the month immediately preceding, unless otherwise ordered by the Commissioner. Any negative report subsequent to the initial production report shall be submitted unless waived by the Commissioner. The report shall be in such form as the Commissioner may prescribe and shall contain such information as the Commissioner may require, including, but not limited to, information regarding amounts of mineral extracted, use, or sold, the costs of shipping and processing, and the monetary returns therefrom.
- C.** Records. Each lessee of a mineral claim shall make and keep appropriate books and records covering the mining, shipping, processing and selling of mineral from the claim. The Commissioner or his representative shall have the right at all times during the existence of each lease of a mineral claim, and for six months thereafter, to make such reasonable examination of such books, records or other material as may be necessary to obtain information desired.

**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).  
 Section R12-5-1806 renumbered from Section R12-5-706  
 (Supp. 93-3).

**R12-5-1807. Relating to Mineral Reservations**

- A.** Definitions. Unless the context otherwise requires:
1. "Commissioner" means the State Land Commissioner.
  2. "Department" means the State Land Department.
  3. "Reserved minerals" means those minerals, hydrocarbons and other substances as defined in A.R.S. § 37-231, subsection (E).
- B.** Scope and authority. These rules and regulations are for the protection of the patentee or contract purchaser of state lands, sold under the authority granted by A.R.S. § 37-231, subsection (E), or their successors in interest, and the state of Arizona, against damage to the lands, livestock, water, crops, or other tangible improvements on lands held by such patentee or contract purchaser, and suffered by reason of the use or occupation of such lands by lessees or permittees engaged in mining and oil and gas exploration and development under leases or permits executed by the Department.
- C.** Nature of mineral reservation. In accordance with the provisions of A.R.S. § 37-231, wherein the state of Arizona reserves and retains all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, thorium, or any other material determined to be peculiarly essential to the production of fissionable materials, and the exclusive right thereto, on, in, or under such land regardless of any sale of its lands and the subsequent issuance of any instrument conveying title thereto, the State Land Department, for, and on behalf of the state of Arizona, at the same time reserves the right to sever and ship the reserved minerals therefrom; at the same time recognizing its responsibility to properly provide for the protection of the purchaser against damage to his lands and certain improvements on the lands held by him as provided by law.
- D.** Surface and subsurface use. A lessee or permittee engaged in mining and oil and gas exploration and development under leases or permits executed by the Department shall have the right to reasonable use of so much of the surface or subsurface of the lands of a patentee or contract purchaser as may be nec-

essary for the conduct of operations to explore for, sever and remove the reserved minerals under such leases or permits, provided that the Commissioner in his discretion may require a lessee or permittee to, first, secure the written consent or waiver of the patentee or contract purchaser; or, second, pay to the patentee or contract purchaser the damages to the lands, livestock, water, crops, or other tangible improvements under agreement; or, third, in lieu of either of the foregoing provisions, post with the Department prior to his entry upon the lands, a cash deposit or surety bond, in an amount to be fixed by the Commissioner, conditioned upon payment to the patentee or contract purchaser for all such damage caused by lessee or permittee.

#### Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-1807 renumbered from Section R12-5-707  
(Supp. 93-3).

### ARTICLE 19. PROSPECTING PERMITS

#### R12-5-1901. Definitions

- A. "Commissioner" means State Land Commissioner.
- B. "Date of issuance of permit" means the 15th day after approval of the designated land by the Commissioner.
- C. "Department" means State Land Department.
- D. "Exploration" means activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land.
- E. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.
- F. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
- G. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.
- H. "Mineral" means all natural inorganic substances that may be extracted from the earth and includes mineral compounds and aggregates, natural building stone, saline deposits, and such organic substances as coal and guano but does not include petroleum and related hydrocarbon gases or other natural gases.
- I. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

#### Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1901 renumbered from Section R12-5-731 (Supp. 93-3).

#### R12-5-1902. Miscellaneous Rules

- A. Scope. These rules and regulations are general rules implementing Article 4, Chapter 2, Title 27, Arizona Revised Statutes, Prospecting Permits and Mineral Leases, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.
- B. State lands subject to permit. Any state-owned land may be brought under permit except those lands under state lease for

mineral commercial or homesite purposes and those lands being specifically used or controlled by state institutions.

- C. Fractions and irregular tracts. For all purposes necessary to the administration of Article 4, Chapter 2, Title 27, Arizona Revised Statutes, each fractional tract of less than 20 acres shall be considered by the Department as representing a rectangular subdivision of 20 acres.  
Fractional remnants resulting from closing side lottage of township surveys shall be considered to be physically located nearest the closing side or sides of such surveys.  
Fractional remnants resulting from surveyed mineral claims or other interior segregations shall be portioned into such 20 acre tracts and fractional remnants as the Department deems most practicable for administration.

#### Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1902 renumbered from Section R12-5-732 (Supp. 93-3).

#### R12-5-1903. Application for Permit

- A. Qualifications of applicant. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and authorized to transact business in the state, may apply to the Commissioner for a mineral exploration permit on state land.
- B. Area covered by permit application. Separate application shall be made for each mineral exploration permit. A permit may include one or more of the rectangular subdivisions of 20 acres, more or less, or lots of state land in any one section of the public land surveys.
- C. Information to be furnished by the applicant
  - 1. The application for permit shall be in such form as the Commissioner may prescribe, shall be in writing, signed by the applicant or an authorized agent or attorney for the applicant, and shall contain the following information:
    - a. Name and address of applicant.
    - b. Statement whether applicant is an individual, partnership or corporation.
    - c. Statement of citizenship.
    - d. If a corporation:
      - i. Name.
      - ii. State of incorporation.
      - iii. Arizona business address.
      - iv. Affirmation of authorization to do business in Arizona.
    - e. Age and marital status.
    - f. Description according to the public land survey of the land for which application is being made.
    - g. Location of mineral locations, claims or leases on the land under application.
    - h. Location of abandoned underground or other major workings on the land under application.
    - i. Location of proposed roadways within the area under application and of proposed of ingress and egress over other state land concerned.
    - j. Location of improvements or crops on land under application, or on land over which proposed routes of ingress and egress pass. (Information required in (g), (h), and (i) above, shall be conveyed by means of a reasonably accurate plat, or drawing, accompanying the application form.)
  - 2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the furnishing by the applicant of such additional information as may appear to him to be necessary or desirable, either

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generally or specifically, for the proper administration of the law governing prospecting permits.

- D.** Filing application for permit; fee; time of filing
1. Each application filed with the Department shall be accompanied by payment to the Department of a filing fee of \$15.00.
  2. Each application so filed that meets the requirements of (A), (B), and (C)(1) above shall be stamped by the Department with the time and date it is filed with the Department and, upon being so stamped, shall have a priority over any other application for a permit involving the same state land which may be filed with the Department subsequent to such time and date.
    - a. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department, provided the requirements of (A), (B), and (C)(1) have been met.
    - b. When two or more applications are delivered to the mail room of the Department in the same mail, the applications shall be deemed to have been simultaneously filed.
  3. Each application not meeting the requirements of (A), (B), and (C)(1) above shall be rejected by the Department.
- E.** Withdrawal from mineral location of lands under application. The open state land involved in a filed and time-stamped application for permit shall be deemed withdrawn from mineral location at the time the application is stamped and shall remain so withdrawn so long as the application is pending.
- F.** Adjudication of rights; notice to applicant; issue of permit
1. Not less than 30 days, nor more than 45 days from the filing of the application with the Department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the Department, or if such prior application is then pending but is subsequently cancelled, not more than 15 days after it is cancelled, the Department shall mail to the applicant, by registered or certified mail at the address shown on the application, a written notice designating:
    - a. The state land described in the application which, at the time the application was filed with the Department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon,
    - b. The amount of rental required to be paid for the mineral exploration permit, and
    - c. Whether a bond will be required as a condition to issuance of such permit.
  2. If, within 15 days after the mailing of such notice, the applicant shall pay to the Department as rental for the permit, the amount of \$2.00 per acre for each acre of state land designated in the notice and shall file with the Department the bond, if any, required as a condition to issuance, the Commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice.
- G.** Default by applicant; cancellation of application. Upon failure of the applicant for a mineral exploration permit to make the payment or furnish the required bond within the period of 15 days, as provided in (F) above, the application shall be deemed cancelled, of no further effect and the filing fee forfeited.
- H.** Simultaneous filings; conflicts; adjudication of priority
1. In the event it is determined by the Department that two or more applications for a mineral exploration permit have been filed at the same time, as indicated by the time-

stamp, and that the applications include one or more rectangular subdivisions of 20 acres, more or less, or lots of state land which are identical, a conflict of priority shall exist as to such identical land.

2. Resolution of conflicts of priority shall be by drawing held by the Department not less than ten, nor more than 20 days after the simultaneous filing. Ample notice by registered mail of conflict and drawing shall be given each applicant involved. The drawing shall be conducted in such a manner as to resolve the order of priority of filing between or among the simultaneously filed applications, and suitable notice of the determined order of priority shall be given to each such applicant by the Department.
- I.** Right of applicant to use of land. The filing of an application for a mineral exploration permit shall not confer upon the applicant any greater right to use of the land under application than that held before such filing.

**Historical Note**

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1903 renumbered from Section R12-5-733 (Supp. 93-3).

**R12-5-1904. Expired****Historical Note**

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1904 renumbered from Section R12-5-734 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

**R12-5-1905. Conversion of Permitted Acreage to Mineral Lease**

Application for lease.

1. Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit with a rectangular subdivision of 20 acres, more or less, or lot of the public land survey, the permittee may apply to the Commissioner for a mineral lease upon state land so contained.
  - a. For the purpose of the application and any mineral lease issued pursuant to such application, such rectangular subdivision or lot shall constitute a mineral claim without extra-lateral rights and shall be deemed to have been located as of the date of filing the application for mineral lease.
2. The application for mineral lease shall be on a form provided by the Commissioner and shall be accompanied by:
  - a. Lease application fee of \$25.00 per lease.
  - b. Advance annual rental of \$15.00 per claim.
  - c. A plat, to scale, accurately showing location of the claim properly tied in to known U.S. Public Survey corner monuments to properly identify the land claimed.
  - d. A reasonably accurate drawing showing the proposed route of ingress and egress over other state land concerned.
  - e. Evidence, in a form acceptable to the Commissioner, constituting the applicant's proof of a valuable mineral deposit within the bounds of the claim. Final determination as to such proof shall be made by the Commissioner from the evidence submitted or by any other means at his disposal.

3. Ordinarily, both the application to lease, and the lease, shall be on the basis of one application per claim and one lease per claim. However,
  - a. The Commissioner may permit the acceptance of applications embracing more than one claim provided the claims are contiguous and further provided, that prior arrangement for such consolidation has been made and approval had; and
  - b. The Commissioner may permit or cause consolidation of claims for lease purposes to the extent consistent with required Departmental administrative procedures. Any consolidation thus effected shall not alter the provisions of subsection (2) above.
4. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the prospecting permit.

#### Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1905 renumbered from Section R12-5-735 (Supp. 93-3).

### ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS

#### R12-5-2001. Definitions

- A. "Common mineral materials" includes cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, fill, for general construction and for similar purposes.
- B. "Natural products" includes all other products severed from the land including, but not limited to, water and plants but shall not include geothermal resources and those substances subject to the mining prospecting permit and leasing laws of Arizona.
- C. "Royalty" means the monetary consideration representing the true appraised value of the common mineral materials of natural products.
- D. For the purposes of any common mineral materials sales agreement, unless otherwise stated, the following terms shall have these meanings.
  1. "Ton" is 2,000 pounds.
  2. A "cubic yard" is a measurement of material that will fill a container that measures 1 yard by 1 yard by 1 yard and when a cubic yard is to be converted to tons industry accepted measures of conversion will be used.
  3. "Annual production" is the number of tons of material that the Department determines is a reasonable amount to be extracted from the site in any 12-month period.
  4. "Unit royalty rate" is the amount of money to be paid by the buyer to the Department for each ton of common mineral materials extracted.

#### Historical Note

Former Section R12-5-771 repealed as an emergency effective October 31, 1977, new Section R12-5-771 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-771 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2001 renumbered from Section R12-5-771 (Supp. 93-3).

#### R12-5-2002. Miscellaneous Rules

- A. Scope. These rules are promulgated pursuant to authority vested in the State Land Department by statute and provide for the disposition of common mineral products and natural products in conformance with the enabling Act and Arizona Constitution. These rules and regulations shall supersede any existing rules or procedures of the Department under this Chapter.
- B. Application of rules. As applicable, these rules shall govern the sale of all common mineral materials and natural products.
- C. State land subject to application to purchase. Any state-owned land containing deposits or accumulations of common mineral materials and natural products shall be subject to application for sale thereof it being understood that the state reserves the right to refuse to authorize the sale of common mineral materials or natural products on its lands.
- D. Location prohibited. Common mineral materials and natural products are not subject to location as a claim, application for prospecting permit or to application for a mineral lease, as provided by Title 27, Chapter 2, Articles 3 and 4 of the Arizona Revised Statutes. The right to enter upon state land for the purpose of exploring and testing of common mineral materials is reserved by the Department.
- E. Nature of agreement. A common mineral materials or natural products sales agreement is an agreement by virtue of which the holder may enter designated state trust lands and recover, extract, use, store, remove and dispose of the materials or natural products designated in the sales agreement, as set forth in R12-5-775(B), R12-5-778, and R12-5-779.
- F. Area of activity. The agreement entitles the holder to pursue any permitted activity on or within the premises as determined by boundaries drawn vertically downward through the exterior boundaries of the premises.
- G. Environmental protection. At any time during the course of the agreement, the Department may require the purchaser to employ new or other conservation measures in addition to any required at the time of purchase. Any such requirement shall not affect the royalty or minimum annual guarantee requirement.
- H. Rehearings and appeals. The right to a rehearing or an appeal from an intermediate or final order of the Department, Commissioner or Board of Appeals from any action taken pursuant to this Article, shall be as authorized by the law pertaining to the conduct of the Department, Commissioner and Board of Appeals, the general rules pertaining to such rehearings and appeals and such right is neither enlarged nor diminished by this Article.

#### Historical Note

Former Section R12-5-772 repealed as an emergency effective October 31, 1977, new Section R12-5-772 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-772 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2002 renumbered from Section R12-5-772 (Supp. 93-3).

#### R12-5-2003. Application for Purchase

- A. Qualification of applicant. Any citizen, or one who has declared his intention to become a citizen, of the United States, partnership, or association of citizens, or a corporation organized under the laws of the United States or any state, or territory thereof, and authorized to transact business in the state, and any agency of the state of Arizona or any political subdivision thereof may apply to the Department to purchase common mineral materials or natural products.

- B.** Area covered by application. A separate application shall be made for each common mineral materials or other natural products sale that relates to land in a different section or to non-contiguous parcels within a section. The size of any area subject to sale shall be determined by the Department in order to further the best interests of the state, and may represent consolidated applications.
- C.** Information to be furnished by the applicant.
1. The application to purchase shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or an authorized agent for the applicant, and shall contain the following information:
    - a. Name and address of applicant.
    - b. Statement whether applicant is an individual, partnership or corporation or agency of the state or political subdivision thereof.
    - c. Statement of citizenship, when applicable.
    - d. If a corporation:
      - i. Name.
      - ii. State of incorporation.
      - iii. Arizona business address.
      - iv. Affirmation of authorization to do business in Arizona.
    - e. Age and marital status, when applicable.
    - f. Description, according to the public land survey, of the land for which application is being made.
    - g. Location of mineral claims or leases on the land under application.
    - h. Location of abandoned mineral workings or common mineral materials pits on the land under application.
    - i. Location of proposed roadways within the area under application and of proposed routes of ingress and egress over other state land.
    - j. Location of improvements or crops on land under application or on land over which proposed routes of ingress and egress pass (information required in (g) through (j) herein shall be conveyed by means of a reasonably accurate plat or drawing accompanying the application form).
  2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information, either generally or specifically, as the Commissioner may deem necessary for the proper administration of the law governing sales of common mineral materials or other natural products.
- D.** Filing application for sale. Each application filed with the Department shall be accompanied by the filing fee provided by law and an application for commercial lease of whatever portion, if any, of the lands covered by the sale application upon which the applicant intends to undertake related commercial activities, place permanent improvements or otherwise use the surface.

#### Historical Note

Former Section R12-5-773 repealed as an emergency effective October 31, 1977, new Section R12-5-773 adopted effective September 16, 1977 (Supp. 77-5).  
Former Section R12-5-773 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2003 renumbered from Section R12-5-773 (Supp. 93-3).

#### R12-5-2004. Exploration Permits

Common mineral materials and natural products, exploration, permits.

1. Scope. Following receipt of an application to purchase, the Department may issue permits to any person to explore for common mineral materials or natural products which are subject to sale.
2. Issuance of permits. Such permits will be issued only for limited entry into designated areas for the purpose of exploring or testing for common mineral material or natural products.
3. Non-assignability of permits. Such permits are non-assignable and subject to control stipulations by the Department.
4. No reimbursable improvements will be authorized or recognized by the Department in connection with any activity pursuant to an exploration permit.
5. Filing an application for sale shall entitle an applicant to an exploration permit without payment of further fees; any other person wishing to explore must pay a sum equal to the application fee.
6. All related state land must be restored after exploration and before sale by the exploring person(s).

#### Historical Note

Former Section R12-5-774 repealed as an emergency effective October 31, 1977, new Section R12-5-774 adopted effective September 16, 1977 (Supp. 77-5).

Former Section R12-5-774 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2004 renumbered from Section R12-5-774 (Supp. 93-3).

#### R12-5-2005. Use of Land

- A.** Rights of applicant. Except as may be provided by an exploration permit duly issued pursuant to R12-5-774, the filing of an application for a common mineral material or other natural products sale shall not confer upon the applicant any greater right to the use of the land under application or to the common mineral materials or other natural products therein than were held by the applicant before filing.
- B.** Rights of Buyer. The Buyer shall have the right to use as much of the surface of the premises as is reasonably necessary for the extraction, severance, temporary storage, removal and disposition of the materials from the premises, including the right to wash, screen, crush, sort or otherwise mechanically process those materials, together with the right of ingress to and egress from the premises across other state lands along designated routes approved by the Department. The right herein granted shall be perfected by Buyer obtaining the commercial lease referred to in R12-5-773(D).
- C.** Use by other than Buyer; assignability of Buyer's rights. No one other than the employees or officers of the Buyer or those of an independent contractor engaged in the performance of a written contract with the Buyer shall have the right to enter upon the premises to perform any act permitted Buyer under the sales agreement. However, Buyer may assign its interest upon the prior written approval of the Department upon a form provided for such.
- D.** No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of a common mineral materials or natural products agreement is concerned. The Buyer shall have 90 days following the expiration or termination of the agreement, provided Buyer has performed all acts to be performed by it to remove any improvements; further provided that such removal does not interfere with the land

being returned to an acceptable condition. Otherwise, any such improvements shall be deemed abandoned to the trust. Nothing in this provision, however, shall interfere with any right to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department.

#### Historical Note

Former Section R12-5-775 repealed as an emergency effective October 31, 1977, new Section R12-5-775 adopted effective September 16, 1977 (Supp. 77-5).

Former Section R12-5-775 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2005 renumbered from Section R12-5-775 (Supp. 93-3).

#### R12-5-2006. Notice and Conduct of Competitive Sales

##### A. Nature

1. All sales of common mineral materials and natural products, except to governmental agencies, shall be by public auction.
2. Common mineral materials or natural products may be sold to governmental agencies without public auction on terms specified by the Commissioner, provided that the materials or products are sold at their true appraised value and that they are to be used for governmental purposes.

##### B. Sales notice. Public notice of sale at public auction for common mineral materials or natural products shall be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state Capitol and in a newspaper of general circulation published regularly nearest the location of the interest to be sold and with the same formality as required for the sale of land.

##### C. Conduct of sales. A representative of the Department shall conduct the public auction in a manner as consistent as possible as that provided for sales of land. Specifically, bidding shall be conducted in the following manner:

1. Bidding shall be by voice bid but no bid will be considered or recorded which is not higher than the highest preceding bid, except the initial bid may be for the unit royalty rate established in the notice of sale.
2. No bid shall be accepted for less than the unit royalty rate established in the notice of sale and the Department reserves the right to reject any or all bids, if determined by it to be in the best interests of the state.
3. Before a final bid at public auction is accepted, bidder must present to the auctioneer the amount of money that represents the minimum required in the notice of sale. The successful bidder shall have an additional 30 days from the date of sale in which to pay such additional sums, post such bonds and complete whatever other requirements may be required. Failing to do so will result in the abandonment of such sums already paid to the Department as liquidated damages and the freeing of the Department to reconsider such other bidders as the proper recipient of the sales agreement.

##### D. Execution of agreement

1. Upon approval by the Department of the successful bid for a common mineral materials or other natural products sale, the Department, by mail, will tender the sales agreement to the Buyer for its signature and simultaneously will notify it of the bond coverage required by the Department as a condition of issuing the sales agreement and will further state the execution fee required by law.
  - a. When the executed sales agreement is filed with the Department by the Buyer and the Buyer has posted the bond or bonds required as a condition of issuance of the agreement, and the agreement has been

signed by the Commissioner, the agreement will be in full force and effect.

- b. The date of commencement of the agreement will be the date of sale.

#### Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2006 renumbered from Section R12-5-776 (Supp. 93-3).

#### R12-5-2007. Common Mineral Materials

##### A. Material to be specified. Common mineral materials sales agreements will recite the material or materials covered by such agreements and the rights of Buyers will pertain only to such materials as specified in the agreement.

1. It is understood that flora will necessarily be distributed by Buyer's activities, but such disturbance shall be minimal and the Department may so direct Buyer's activities to assure such minimal disturbance.
2. Buyer shall not be entitled to keep, give, sell or otherwise dispose of any flora on the premises unless the agreement so provides, in which event such flora shall have been appraised by or for the Department and a separate price therefore set forth in the agreement.
3. This agreement shall confer the right on the Buyer to extract groundwater from the land area subject to the sale for the purposes stated in R12-5-772, subsection (E) and R12-5-775, subsection (B), and purposes incidental or related thereto which uses and purposes shall be set forth in the Notice of Sale and which shall have been a factor in the establishment of the minimum acceptable unit royalty rate however, groundwater may be separately noted for sale in which event the notice of sale shall specifically so provide.
4. The granting of a right to extract groundwater shall not constitute a representation or guarantee by the Department that there is any groundwater available at any level or any quality for extraction.
5. Any right to extract groundwater conferred hereby is subject to any and all limitations and provisions existing in law or regulation of any agency including any such applicable other regulation of this Department.
6. Nothing herein shall affect any right to the use of groundwater which buyer might otherwise possess by virtue of being a lessee of the Department or having otherwise acquired a groundwater permit through Public Auction Sale by the Department.

##### B. Advertising of sale. The advertising of sale of common mineral materials shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, the term, the time and place of auction, the unit, the minimum unit royalty rate, minimum annual production, total bid deposit required, bond requirements, the office where additional information may be obtained and such additional information as the Department may deem necessary.

1. When the materials to be sold on a basis other than the standard one set forth in these rules, the notice of sale shall so state in specific detail.

##### C. Appraisals. Common mineral materials to be sold will be appraised by the Department when the materials are in their undisturbed natural condition ("in situ") using acceptable appraisal standards. The appraisal will determine the minimum unit royalty rate and minimum annual production.

##### D. Annual royalty. Until any reappraisal goes into effect, the annual royalty shall be the higher of

1. The minimum annual royalty as determined by the bidding process as provided in R12-5-777(E),



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2. The number of units of material extracted multiplied by the unit royalty rate.  
Upon reappraisal, subsections (D)(1) and (2) shall be adjusted to reflect the reappraisal.
  - a. The minimum annual royalty payment shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable monthly within 30 days after billing by the State Land Department.
  - b. Minimum annual royalty payments shall be applied as a credit to payment for materials for which payment must be made, provided, however, that monies so advanced and not credited against payments for materials shall become the sole property of the state upon termination or expiration of the agreement.
  - c. For purposes of determining minimum annual royalty payment due in any particular year:
    - i. Multiply the original minimum annual royalty by the number of years of the agreement;
    - ii. Subtract the royalties thus far paid by (i);
    - iii. Divide (ii) by the years remaining and that will give the minimum annual royalty for the year in question.
  - d. In no event will the minimum royalty be less than 5% of the original minimum annual royalty.
- E. Bids. Unless otherwise provided by the Commissioner and specifically published in the notice of sale, all bids shall be by the unit royalty rate.
  1. In determining the minimum annual royalty, the Department shall multiply the unit royalty rate bid by the successful bidder times the minimum annual production which shall be determined solely by the Department and set forth in the notice of sale.
- F. Reappraisals. The royalty rate established initially shall remain fixed for the first two years of the agreement. For each subsequent year the Department may reappraise in the following manner:
  1. No later than 60 days before the end of any anniversary date, the Department may reappraise the material to determine the unit rate and/or the acceptable minimum annual royalty; that reappraisal shall be effective for the second year following the one in which the reappraisal is made.
  2. The Department shall notify the Buyer within 30 days of the reappraisal and Buyer shall be obligated for payments based on such reappraisal for the second year following the one in which the reappraisal is made. If any proper appeal is taken by Buyer and not concluded before the effective date of the reappraisal, the prior royalty shall be paid, with any necessary adjustment being made immediately upon the conclusion of such appeal.
  3. The Department is not obligated to reappraise in any particular year and its failure to do so merely means the last appraisal results shall remain in effect until a proper reappraisal is made.
- G. Provisions of the agreement
  1. Term
    - a. The term of a common mineral material sales agreement shall not be for more than 20 years.
    - b. The Department will set the term of each sales agreement in such manner as to best utilize the resources and provide an economically sound term compatible with the law, the best interest of the trust and of the state.
  2. For contract administration and sales-related expenses, a charge of 2% will be added to the minimum annual royalty and to royalties paid for production in excess of minimum annual production.
  3. The royalty provisions shall be set forth in the agreement.
  4. All common mineral materials removed from the premises shall be measured by volume, weight or truck tally or a combination of these methods or any other form of measurement the Department determines to be to the best interest of the state.
  5. Buyer's conduct on premises
    - a. The Buyer will conduct its operations in a workmanlike manner at all times, to protect the premises and soils thereof and including, but not limited to:
      - i. Keeping the premises free of all litter, junk or debris;
      - ii. Taking precautions as necessary to protect the safety of persons or property upon the premises;
      - iii. Complying with all flood control regulations which may be applicable to the premises;
      - iv. Fencing all dangerous workings for the protection of humans and livestock;
      - v. Complying with all other rules and regulations prescribed from time to time by the Department or any other agency having jurisdiction over the premises or the activities.
    - b. Upon termination of the agreement, the Buyer will restore the surface of the premises to a reasonable condition in accordance with good mining practices, such restoration to include:
      - i. The sloping of side banks of the excavation resulting from the operation to a grade of not more than one foot vertical for each two feet of horizontal distance, unless otherwise specified by the Department;
      - ii. The backfilling into the excavation of all unused waste materials and overburden resulting from the operation, and the leveling of such backfill to a reasonably uniform depth on the floor excavation, unless otherwise specified by the Department;
      - iii. The removal and restoration of the surface of any new haul roads constructed on state land by Buyer, which roads the Department does not elect to retain, any such election of retention to be made in writing.
    - c. The Buyer will indemnify, hold and save harmless, the state of Arizona, the Department and all of their officers and employees, against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from use, condition or occupation of the premises.
  6. Transfers
    - a. The Buyer, with prior approval of the Commissioner, may assign the agreement.
    - b. The application for assignment and the assignment and assumption of the agreement will be on such forms as the Department may prescribe.
    - c. Assignment shall not relieve the Buyer from any duties under the agreement but the assignee shall succeed to all of the rights and be jointly and severally liable, along with the assignor, to all of the obli-

- gations existing under the agreement dating from its inception.
- d. No transfer of the Buyer's interest or any portion thereof is authorized except as specifically provided in these rules.
7. Termination of sales agreement
    - a. Upon 30 days' written notice to Buyer, the Department may terminate the agreement for the failure or neglect of the Buyer to perform any of its provisions, including those specified by these rules. Failure to pay royalties when due is such a failure of performance.
    - b. Notices of termination shall be mailed to the address of record at the Department of the Buyer. Such notice shall set forth the reason for the termination.
    - c. Provided Buyer is not in default in any of the terms and conditions of the agreement, the Buyer shall have the right to terminate the agreement upon any annual anniversary date thereof by giving the Seller not less than 30 days' prior notice in writing of Buyer's intention to do so.
  8. Upon termination or expiration of the agreement, Buyer shall have 90 days, provided it has fully performed under the agreement, to remove any stockpiled material on the premises. The Commissioner may, if the Buyer so requests in writing within ten days before the expiration of any such removal period, or extension thereof, grant a further extension not to exceed 60 days and provided that the cumulative removal period, along with extensions, shall not exceed 210 days. If the Buyer has not fully performed or fails to remove the stockpiled material within that specified time, such material will be deemed abandoned to the Trust. Any subsequent buyer of material on the portion of the premises on which stockpiled will succeed to its ownership and pay the Department the new Buyer's royalty rate therefor upon removal.
  9. The agreement shall not provide for any renewal thereof.
  10. Bonds
    - a. The Commissioner may require the Buyer to post a cash deposit or surety bond to guarantee the performance of the sales agreement and the payment of all monies due the state under the sales agreement.
    - b. Restoration and surface damage bond
      - i. The Commissioner shall require the Buyer to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the Buyer will guarantee restoration of the surface of the land described in the sales agreement to a reasonable condition in accordance with good mining practices, upon termination of the sales agreement.
      - ii. The Commissioner shall also require the Buyer to include in the above bond an amount set by the Department as a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the owner or lessee of the surface of state land covered by the common mineral materials sales agreement, or across which the common mineral materials Buyer exercises the right of ingress, for any loss to such owner or lessee for damage or destruction caused by the common mineral materials Buyer or Buyer's agents or employees, to grasses, forage, crops and improvements upon such land.
  - iii. Assignment of the sales agreement will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under the bond may be effected through the posting of a replacement bond by the assignee, but only after approval by the Commissioner in lieu of a replacement bond, the bonding company may furnish a bond rider form changing the name of principal.
  - iv. The Commissioner, in his discretion reasonably exercised, may reduce or increase the principal amount of any bond.
  - v. After determination by the Commissioner that full discharge of the conditions of the obligation under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
  - vi. Surety on the bond shall have the right to cancel the bond and be relieved of future liability, but not previous liability after the period of notice, by giving 30 days' notice to the Buyer and the Department of its desire to so cancel. Failure by the Buyer to post a replacement bond before the expiration of the 30 days, mentioned next above, shall constitute a default by the Buyer and cause for cancellation of the sales agreement.
11. Records and reports
    - a. A monthly report of production (either affirmative or negative) shall be submitted by the Buyer of each common mineral materials sales agreement within 15 days after the end of the month in which his sales agreement was issued, and by the 15th of each month thereafter.
    - b. The report shall be in such form as the Commissioner shall prescribe and shall contain such information as the Commissioner shall require, including, but not limited to, the type, volumes, weights and classifications of the common mineral materials removed or disposed of.
    - c. Each Buyer shall make and keep an accurate account of all operations, showing the sales, prices, dates, purchasers and the total amount of material disposed or removed from the subject premises.

#### Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2007 renumbered from Section R12-5-777 (Supp. 93-3).

#### R12-5-2008. Natural Products -- Groundwater

When the law permits and the Department believes it consistent with the best interests of the state, groundwater may be sold at public auction in the same manner and subject to the same forms, insofar as possible, as are common mineral materials.

#### Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2008 renumbered from Section R12-5-778 (Supp. 93-3).

#### R12-5-2009. All Other Natural Products

When the Department believes it consistent with the best interests of the state, natural products other than groundwater may be sold at public auction in the same manner and subject to the same terms, insofar as possible, as are common mineral materials.

**Historical Note**

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2009 renumbered from Section R12-5-779 (Supp. 93-3).

**ARTICLE 21. OIL AND GAS LEASES****R12-5-2101. Definitions**

In these rules and regulations, the following terms shall have the meaning herein given:

1. "Department" means the State Land Department.
2. "Lease" as used herein, shall mean an oil and gas lease issued pursuant to the provision of this Act.
3. "Lessee" means the holder of an oil and gas lease issued pursuant to this Act and shall also include any assignee of an original lessee.
4. "Surface lease" means a lease on the surface of any state land for grazing, agricultural, commercial, or homesite purposes.
5. "Surface lessee" means the holder of a lease on the surface of any state land for grazing, agricultural, commercial or homesite purposes.
6. "Oil and gas" and "oil or gas" when used herein shall be deemed to include "oil, gas and other hydrocarbon substances."
7. "Produced" when used herein shall be deemed to include the words "procured and produced."
8. "State lands" means any land or any interest therein owned or held in trust, or otherwise, by the state, including, but not limited to, leased school or university lands.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2101 renumbered from Section R12-5-781 (Supp. 93-3).

**R12-5-2102. Who May Lease for Oil and Gas -- Qualified Lessees**

Any person of the age of 21 years or over, a citizen of the United States, or one who has declared an intention to become a citizen of the United States, or any firm, association, or corporation which has complied with the laws of the state shall be qualified to lease state lands.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2102 renumbered from Section R12-5-782 (Supp. 93-3).

**R12-5-2103. Applications for Noncompetitive Oil and Gas Leases**

A noncompetitive oil and gas lease is one covering state lands not located within any known geological structure of a producing oil and gas field as determined and designated by the Department. Such determination and designations shall be made as provided in Section (3)(c) of Arizona Oil and Gas Leasing Act of 1951. A right of priority to a noncompetitive oil and gas lease shall be had by the first qualified applicant who shall file a proper application therefor in the office of the Department, together with payment of the required fees and advance rental. The application shall be on a form prescribed by the Department completely filled out and duly signed by the applicant. Any false or willfully incomplete statement will be considered misrepresentation and will be cause for rejection.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2103 renumbered from Section R12-5-783 (Supp. 93-3).

**R12-5-2104. Applications for Noncompetitive Leases -- Time for Filing**

Applications for noncompetitive oil and gas leases shall be received for filing in the office of the Department in Phoenix during the office hours of any business day. Except as hereinafter specifically provided, all such applications received, whether by U.S. Mail or by personal delivery over the counter, shall be immediately stamped with the date and time of filing. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department. The time of filing so indicated on each application shall evidence the priority of the first qualified applicant and the right to a lease which may be had thereby; subject, however, to the adjudication of conflicts which may arise by reason of applications simultaneously filed as hereinafter set forth.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2104 renumbered from Section R12-5-784 (Supp. 93-3).

**R12-5-2105. Simultaneous Filings -- Conflicts**

In the event it is determined that two or more applications for a lease have been filed at the same time as indicated by the time-stamp applied as set forth in rule 4, such applications shall be deemed to be simultaneous filings. In the event two or more simultaneously filed applications include any land which are identical, a conflict shall exist as to such lands. Adjudication of conflicts shall be in accordance with the provisions of rule 6 thereof.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2105 renumbered from Section R12-5-785 (Supp. 93-3).

**R12-5-2106. Department's Decisions -- Conflicts**

The Department will not issue any lease pursuant to an application unless the land is vacant, and then in accordance with the following procedure:

1. No conflict. Where there is no conflict, the Department shall issue a noncompetitive lease to the first qualified applicant.
2. Conflicts. Where there is a conflict, the Department shall provide for a drawing between the qualified applicants to determine which applicant shall be entitled to a lease. The Department shall give notice to the conflicting applicants by registered mail, fixing a date and hour on which a drawing will be held for the land in conflict, which date shall not be less than 10 days or more than 30 days from the date of said notice. The applicants may remove the conflict by amended application, which shall carry the same filing date as the original application, at any time prior to the date of the drawing. Rentals advanced applicable to the lands withdrawn shall be refunded to the applicant. If, however, the conflict is not so removed, the drawing will be held and the lease, by the Department decision, will be awarded to the winner. The Department will then give notice of the results of said drawing to each applicant.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2106 renumbered from Section R12-5-786 (Supp. 93-3).

**R12-5-2107. Applications -- Refunds**

- A. When an application for lease is rejected in its entirety, all monies paid by the applicant, except the filing fees, will be

refunded, when rejected in part, the unused portion of the rental payment will be refunded.

- B.** An acceptable application may be withdrawn at any time prior to issuance of lease, but if withdrawn, the rentals and fees transmitted with said application will thereupon be forfeited to the state as penalty for failure to fulfill the obligations.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2107 renumbered from Section R12-5-787  
(Supp. 93-3).

**R12-5-2108. Noncompetitive Lease Form**

Noncompetitive oil and gas leases shall be on a standard lease form prescribed by the Department. The current standard lease form is No. OG-10.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2108 renumbered from Section R12-5-788  
(Supp. 93-3).

**R12-5-2109. Acreage Limitations**

Lands under a single lease shall be in as compact a body as possible, but may include non-contiguous lands within an area of six miles square if the maximum acreage of contiguous land is not available, but in no event to exceed the total of 2,560 acres. No person, association, or corporation shall take or hold at any one time noncompetitive oil or gas leases exceeding in the aggregate 15,360 acres, but any leases as to which the lessees interest becomes a signatory and a cooperative or unit plan for the development and operation shall be exempt from the acreage limitation.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2109 renumbered from Section R12-5-789  
(Supp. 93-3).

**R12-5-2110. Withdrawals from Leasing**

The Department may refuse to lease any state lands for oil and gas when such lands are being used by the state or any state department for any state purpose. The Department may withdraw from leasing any specific area of land not located within any known geological structure of a producing oil or gas field where it appears that such withdrawal is in the interest of the state, provided no lands shall be withdrawn without the consent of a committee as provided in Section 3 (a) 11 of the Arizona Oil and Gas Leasing Act of 1951. Any lands so withdrawn may again be subject to leasing pursuant to these regulations, if approved by said committee.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2110 renumbered from Section R12-5-790  
(Supp. 93-3).

**R12-5-2111. Competitive Leases -- Designation and Offer of Lands for Lease**

State lands which are located within a known geological structure of a producing oil or gas field shall be divided into tracts for leasing purposes. Each such tract shall contain not less than one-quarter section of land, and not more than two sections of land, provided that a tract containing less than one-quarter section of land may be leased if such tract is segregated from other state lands not then subject to oil and gas lease. All such tracts shall be in reasonably compact form and shall be offered for lease at a royalty of not less than 12 1/2%, to be specified in the call for sealed bids to the qualified person who offers the highest cash bonus by competitive sealed bids. Such lands shall be offered upon receipt of an application to lease from one or more qualified persons or when, in the opinion of

the Department, there shall be a demand for the purchase of leases on such lands.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2111 renumbered from Section R12-5-791  
(Supp. 93-3).

**R12-5-2112. Notice of Competitive Lease Offer**

Notice of the offer of lands for oil and gas lease shall be by publication in a newspaper of general circulation in the state of Arizona. Such notice shall be published twice and the last publication shall be not less than 15 days prior to the date fixed for the opening of bids. The notice shall be published at the expense of the state but the expenses of publication shall be charged to the person whose bid is accepted. A copy of the notice shall be posted in the office of the Department in Phoenix, Arizona, during the period of publication. Such notice shall set the day and hour at which bids will be opened in the office of the Department in Phoenix, Arizona, and full information shall be given as to how and when bids are to be submitted. On or before December 1 of each year, the Department shall designate by general order of the newspaper in which such publication shall be made during the following calendar year. The publication shall contain the description of the land proposed to be leased, the time when the bids will be received and opened, and shall set forth the form of lease which the successful bidder will be required to execute, either by attaching a form of lease in its entirety or by designating the form number of the lease on file with the Department, copies of which will be furnished to any person on request. The annual rental in such lease shall be specified in the amount of \$1.00 per acre per year and such rental for each year shall be credited on royalty payments for that year.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2112 renumbered from Section R12-5-792  
(Supp. 93-3).

**R12-5-2113. Qualifications of Successful Bidder**

Each person shall submit with his sealed bid the following: certified check for the amount bid by him and proof of citizenship as required in rule 2.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2113 renumbered from Section R12-5-793  
(Supp. 93-3).

**R12-5-2114. Competitive Lease Form**

Competitive oil and gas leases shall be on a standard lease form prescribed by the Department. The current standard lease form is No. OG-12.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2114 renumbered from Section R12-5-794  
(Supp. 93-3).

**R12-5-2115. Award of Lease**

Following the opening of the sealed bids, the Department, subject to its right to reject any or all bids, shall award the lease to the successful bidder. Notice of the Department's action shall be forthwith transmitted to the interested parties. The Department shall return forthwith all checks accompanying rejected bids. If the lease be awarded, two copies of the lease will be sent to the successful bidder, and he will be required within 30 days from receipt thereof to execute them, pay the first year's rental, the cost of publication, and the reasonable expenses of the sale. If a bidder, after having been awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited. If two or more

tracts are awarded to any bidder where the acreage does not exceed more than two sections of land, such tracts may, if not otherwise prohibited by law be included in a single lease.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2115 renumbered from Section R12-5-795  
(Supp. 93-3).

#### R12-5-2116. Surface Use

Oil and gas lessees shall have the right to use so much of the surface of the lands as may be reasonably necessary for the conduct of their operations under the leases. The lessee shall be liable for damage caused by it to the state's interest in the surface or to the interest of a surface lessee, if any, and may be required by the Department at any time to execute a bond in a reasonable principal amount conditioned upon payment for all such damage. If the lessee and a surface lessee cannot agree upon the amount of damages caused by lessee, such damages shall be appraised by the Department or its agent and appeal from the judgment of the Department may be taken as provided in Sections 11-210 and 11-211 of the Arizona Code of 1939.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2116 renumbered from Section R12-5-796  
(Supp. 93-3).

#### R12-5-2117. Conduct of Operations

All lessees and operators shall comply with the Arizona Oil and Gas Conservation Act 1951 as now in effect or as hereafter amended, and all rules, regulations, and orders issued thereunder shall be applicable to the operations of state oil and gas lessees.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2117 renumbered from Section R12-5-797  
(Supp. 93-3).

#### R12-5-2118. Cooperative and Unit Agreements

Commitment of leased state lands to cooperative or unit agreements shall be conditioned on the following procedure and requirements:

1. That there be submitted to the Department two copies of a plat showing the area to be unitized, together with such structural and geological information as will tend to support the delineation of the area. The information so furnished shall be held confidential until released by the applicant or applicants.
2. That there be submitted to the Department two preliminary drafts of the agreement for approval as to form. Where the amount of federal land predominates in any area, the standard form of unit agreement of the United States should be followed.
3. Upon determination by the Department that it is for the best interest of the state to commit leased state lands to a cooperative or unit agreement for the development and operation of an oil or gas pool, the Department shall thereafter finally join in and consent to such agreement when submitted for final approval.
4. A cooperative or unit agreement shall not affect the leasehold of any leased state lands lying outside of the unit area, and shall not be effective as to the leaseholds lying within the unit area unless the lessees thereof and the then approved operating interests shall subscribe to such an agreement.
5. The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2118 renumbered from Section R12-5-798  
(Supp. 93-3).

#### R12-5-2119. Assignments

A lessee may assign a lease as to all or part of the leased land or any interest in the leasehold rights to any person, firm, association, or corporation qualified to hold the same, provided that any assignment of a part of a lease shall cover not less than a quarter of a quarter of a section, or approximate equivalent thereof. If a lease is assigned as to a segregated portion of the land covered thereby, the rentals payable thereunder shall be apportionable as between the several leasehold owners ratably according to the surface area of each, and default in rental payment by one shall not affect the rights of other leasehold owners under the lease. Liability for the breach of any obligation under the lease shall rest exclusively upon the owner of the lease, or the portion thereof, who commits such breach. All assignments shall be on forms prescribed by the Department and shall be filed with the Department within 90 days from the date thereof by depositing a duplicate executed original or certified copy by a notary public. No such assignment will be accepted by the Department unless so filed. An assignment shall cover only one lease or a portion thereof. The Department shall retain in its files executed duplicate originals of all issued leases and all assignment deposited with it and all such leases and assignments shall be recorded in tract books for such purposes. All assignments deposited with the Department shall be accompanied by the prescribed fee.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2119 renumbered from Section R12-5-799  
(Supp. 93-3).

#### R12-5-2120. Surrender

A lease or any part thereof, but not less than a quarter of a quarter section, or the approximate equivalent thereof, may be surrendered at any time by the record title holder thereof to the lessor upon payment to the Department of all amounts then due as to the lands so surrendered. No refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee or record title holder upon any such surrender. Such surrender shall be made by depositing with the Department one copy of the instrument of surrender, together with the prescribed surrender fee and thereafter the lessee or record title holder shall incur no further liability under said lease as to the land so surrendered.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2120 renumbered from Section R12-5-800  
(Supp. 93-3).

#### R12-5-2121. Rental Notices

The Department shall send rental notices to lessees at their address of record with the Department by mail at least 30 days prior to the date upon which such rental is due and no lessee shall be in default until the lessee or record title holder has been so notified.

#### Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2121 renumbered from Section R12-5-801  
(Supp. 93-3).

#### R12-5-2122. Monthly Statements

Monthly statements of production and other statements required of the lessee under the lease shall be made in triplicate and shall be transmitted to the Department.

**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-2122 renumbered from Section R12-5-802  
(Supp. 93-3).

**ARTICLE 22. GEOTHERMAL RESOURCES****R12-5-2201. Definitions**

In these rules and regulations the following terms shall have the meaning herein given:

1. "Commission" means the Oil and Gas Conservation Commission.
2. "Completion" or "completed well" means a well that has produced or is capable of producing geothermal resources or has been determined to be a dry hole, temporarily abandoned or plugged and abandoned, or has been readied for other phases of exploitation.
3. "Department" means the State Land Department.
4. "Environment" means the sum total of all the external conditions which may act upon an organism or community, to influence its development or existence.
5. "Geothermal area" means the same general surface area which is underlain or reasonably appears to be underlain by one or more formations containing geothermal resources.
6. "Geothermal resources" means:
  - a. All products of geothermal processes embracing indigenous steam, hot water and hot brines.
  - b. Steam and other gases, hot water and hot brines resulting from water, other fluids or gas artificially introduced into geothermal formations.
  - c. Heat or other associated energy found in geothermal formations, including any artificial stimulation or induction thereof.
  - d. Any mineral or minerals, exclusive of fossil fuels and helium gas, which may be present in solution or in association with geothermal steam, water or brines.
7. "Lease" means a geothermal resources development lease issues for state lands pursuant to the provisions of this Article.
8. "Lessee" means the holder of a lease or any assignee of an original lease or part thereof.
9. "Operator" means any person drilling, maintaining, operating, pumping or in control of any well, and includes the owner, when any well is or has been or is about to be operated or under the direction of the owner.
10. "Owner" means and includes the operator when any well is operated or has been operated or is about to be operated by any person other than the owner.
11. "Person" means and includes any individual, firm, association, corporation or any other group or combination acting as a unit.
12. "Waste" means any physical waste including, but not limited to, underground waste resulting from the inefficient, excessive or improper use of dissipation of reservoir energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir, and surface waste resulting from the inefficient storage or utilization of geothermal resources and the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that causes or tends to cause the unneces-

sary or excessive surface loss or destruction of geothermal resources obtained or released from the reservoir.

13. "Well" means any well drilled in search of geothermal resources or any development well on lands in areas proved to be underlain by one or more formations containing geothermal resources or any well drilled for information purposes, or any producing well or reentered abandoned well used for the injection of fluids into the geothermal formation or disposition of fluids into non-geothermal formations, or any well drilled for the purpose of stimulating the heat of a formation or for the creation of heat in a formation by nuclear or any other form of energy.
14. "Known Geothermal Resource Area (KGRA)" means an area in which the geology, nearby discoveries, competitive interests, and other indicia would, in the opinion of the Department, engender a belief in the people who are experienced in the subject matter that the prospects for the extraction of geothermal resources are sufficient to warrant expenditures of money for that purpose.

**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-850 repealed, new Section R12-5-850 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2201 renumbered from Section R12-5-850 (Supp. 93-3).

**R12-5-2202. Expired****Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-851 repealed, new Section R12-5-851 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2202 renumbered from Section R12-5-851 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

**R12-5-2203. Applications -- Refunds**

- A. When in the case of only one bidder and an application for lease is rejected in its entirety, all monies paid by the applicant, except the filing fees, will be refunded; when rejected in part, the unused portion of the rental payment and bonus bid will be refunded.
- B. An acceptable application may be withdrawn at any time prior to issuance of lease, but if withdrawn, the rentals and fees transmitted with the application will thereupon be forfeited to the state as penalty for failure to fulfill the obligations.

**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-852 repealed, new Section R12-5-852 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2203 renumbered from Section R12-5-852 (Supp. 93-3).

**R12-5-2204. Terms of Lease**

- A. If, after the expiration of the ten year primary term or the additional two-year period provided for in A.R.S. § 27-6710, this lease is maintained in force and effect by the production of geothermal resources in paying quantities and the production shall cease, this lease shall continue in force and effect provided lessee pays the rentals provided for in these rules and conducts operations on the lands with reasonable diligence for the purpose of restoring the paying production of geothermal resources from the lands. In the event paying production of geothermal resources from the lands is restored within one

year from the date of cessation of production, this lease shall remain in full force and effect.

- B.** If geothermal resources in paying quantities are discovered on the lands covered by this lease or on lands joined therewith in a cooperative or pooled unit, while the lease is in full force and effect, but lessee is unable to produce any geothermal resources because of lack of transportation, processing or generating facilities, the lease shall be extended beyond the primary term of ten years from year to year, but not to exceed a period of three years, by payment of a shut-in geothermal resources royalty of \$2.00 per acre per year, payable in advance annually on the anniversary date of the lease, and if the payment is made it will be considered geothermal resources are being procured and produced in paying quantities from the leased premises for such year.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-853 repealed, new Section R12-5-853 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2204 renumbered from Section R12-5-853 (Supp. 93-3).

#### R12-5-2205. Lease of State Lands

Notice of the offer of lands for geothermal resources lease and call for bids shall be by publication in a newspaper of general circulation in the state of Arizona. Each notice shall be published twice and the last publication shall be not less than 15 days prior to the date fixed for the opening of bids. The notice shall be published at the expense of the state, but the expenses of publication and other reasonable expenses of the sale shall be charged to and paid by the person whose bid is accepted. A copy of the notice shall be posted in the office of the Department in Phoenix, Arizona, during the period of publication. The notice shall set the day and hour at which bids will be opened in the office of the Department in Phoenix, Arizona, and full information shall be given as to how and when bids are to be submitted. On or before December 1 of each year, the Department shall designate by general order the newspaper in which said publication shall be made during the following calendar year. The publication shall contain the description of the land proposed to be leased, the time when the bids will be received and opened, and shall set forth the form of lease which the successful bidder will be required to execute by designating the form number on file with the Department, copies of which will be furnished to any person on request. The annual rental in such lease shall be in the amount as specified in the publication.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-854 repealed, new Section R12-5-854 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2205 renumbered from Section R12-5-854 (Supp. 93-3).

#### R12-5-2206. Designation and Offer of Lands for Lease

State lands which are determined to be located within a Known Geothermal Resource Area (KGRA) shall be divided into tracts for leasing purposes. Each tract shall contain not less than one-half section of land and not more than one section of land, provided that a tract containing less than one-half section of land may be leased if the tract is segregated from other state lands. All such tracts shall be in as compact a body as possible and shall be offered for lease at a royalty of not less than 12 1/2% or as otherwise to be specified in the call for sealed bids to the qualified person who offers the highest cash bonus by competitive sealed bids. Such lands shall be offered when, in the opinion of the Department, there shall be a demand for the purchase of leases on such lands.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-855 repealed, new Section R12-5-855 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2206 renumbered from Section R12-5-855 (Supp. 93-3).

#### R12-5-2207. Qualifications of Successful Bidder

Each person shall submit with his sealed bid a certified check for the amount bid by him.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-856 repealed, new Section R12-5-856 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2207 renumbered from Section R12-5-856 (Supp. 93-3).

#### R12-5-2208. Award of Lease

- A.** Following the opening of the sealed bids, the Department, subject to its right to reject any or all bids, shall award the lease to the highest bidder. Notice of the Department's action shall be forthwith transmitted to the interested parties. The Department shall return forthwith all checks accompanying rejected bids. If the lease is awarded, two copies of the lease will be sent to the successful bidder, and the bidder will be required within 30 days from receipt thereof to execute and return them to the Department, pay the first year's rental, the cost of publication, and the reasonable expenses of the sale. If a bidder, after having been awarded a lease, fails to execute it or otherwise comply with the applicable regulations, all of the bidder's monies on deposit will be forfeited. As pertains to tract offerings located within a known geothermal resource area, if two or more tracts are awarded to any bidder where the acreage does not exceed more than two sections of contiguous adjacent land, such tracts may, if not otherwise prohibited by law, be included in a single lease.
- B.** Tie bids. In the case of acceptable tie bids, amended applications shall be submitted by those tied applicants, and preference will be given to the highest resulting bonus bid, but still subject to the Department's right to reject any and all bids.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-857 repealed, new Section R12-5-857 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2208 renumbered from Section R12-5-857 (Supp. 93-3).

#### R12-5-2209. Surface Use

- A.** Geothermal resources lessees shall have the right to use so much of the surface of the lands as may be reasonably necessary for the conduct of their operations under the leases.
- B.** Surface rights to include:
1. Prospecting, exploration drilling and production.
  2. Right to construct and maintain all roads, communication lines, pipelines, reservoirs, storage tanks, pumping stations, or other structures reasonably necessary to the production thereof, to the extent such construction is compatible with existing and future surface use of the land, as determined by the State Land Commissioner.
- However, the lessee shall be liable for unnecessary or excessive damage caused by lessee, in the judgment of the Department, to the state's interest in the surface, or to the interest of a surface lessee, if any, and the Department may require the lessee at any time to execute a bond in a reasonable principal amount as determined by the Department conditioned upon payment for all such damage. If the lessee and a surface lessee cannot agree upon the amount of damages caused by lessee,

such damages shall be appraised by the Department or its agent and appeal from the judgment of the Department may be taken as provided by law.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-858 repealed, new Section R12-5-858 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2209 renumbered from Section R12-5-858 (Supp. 93-3).

#### R12-5-2210. Environmental Protection and Conduct of Operations

- A. All lessees and operators shall comply with all applicable Arizona environmental statutes as now in effect or as hereafter enacted or amended, and all applicable rules and regulations. In addition, lessee must comply with all federal environmental statutes and regulations.
- B. Lessee or operator shall be subject to liability for any excessive or unnecessary damage to the surface of the ground and improvements thereon, and is charged to conduct operations so as not to pollute surface or subsurface waters on the lands covered by the lease or on neighboring lands.
- C. In addition, operations shall be conducted so as to prevent pollution to the air, noise pollution, compliance with the Arizona Antiquities Act and acts providing for the protection of native flora and fauna.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-859 repealed, new Section R12-5-859 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2210 renumbered from Section R12-5-859 (Supp. 93-3).

#### R12-5-2211. Cooperative and Unit Agreements

Commitment of leases of state lands to cooperative or unit agreements shall be conditioned on the following procedure and requirements which shall be submitted at time of application.

1. There shall be submitted to the Department two copies of a plat showing the area to be unitized, together with such geophysical and geological information as will tend to support the delineation of a geothermal resource area. The information so furnished shall be held confidential by the Department until released by the applicant or applicants.
2. There shall be submitted to the Department two preliminary drafts of the agreement for approval as to form. Where the amount of federal land predominates in any unit area, the standard form of unit agreement of the United States should be followed.
3. After determination by the Department that it is for the best interest of the state to permit a lessee to participate in a cooperative or unit agreement for the development and operation of a geothermal resource area, the Department may grant approval therefor when a request for such approval is submitted.
4. A cooperative or unit agreement shall not affect the leasehold of any leased state lands lying outside of the unit area, and shall not be effective as to the leaseholds lying within the unit area unless the lessees thereof and the then approved operating interests shall subscribe to such an agreement.
5. The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-860 repealed, new Section R12-5-860 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2211 renumbered from Section R12-5-860 (Supp. 93-3).

#### R12-5-2212. Assignments

A lessee may assign a lease as to all or part of the leased land or any interest in the leasehold rights to any person, firm, association, or corporation qualified to hold the same, provided that any assignment of a part of a lease shall cover not less than a quarter of a quarter of a section, or approximate equivalent thereof. If a portion of a lease is assigned as divided interest of the lands covered thereby, the rental payment attributable to each new divided interest shall be the sole responsibility of the new assignee, and default in rental payment by one shall not affect the rights or other leasehold interests under the original lease. If an undivided interest in a leasehold is assigned, then the rental payments are attributable to the lease as a whole and the original lessee is solely responsible for the payments thereof. All assignments shall be on forms prescribed by the Department and shall be filed with the Department within 30 days from the date thereof by depositing a duplicate executed original or certified copy by a notary public. No such assignment shall cover more than one lease or a portion thereof. The Department shall retain in its files executed duplicate originals of all issued leases and all assignments deposited with it, and all such leases and assignments shall be recorded in tract books for such purposes to be considered a valid assignment by the Department. All assignments deposited with the Department must be accompanied by the prescribed fee.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-861 repealed, new Section R12-5-861 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2212 renumbered from Section R12-5-861 (Supp. 93-3).

#### R12-5-2213. Surrender

A lease or any part thereof, but not less than a quarter of a quarter section, or the approximate equivalent thereof, may be surrendered at any time by the record title holder thereof to the lessor upon payment to the Department of all amounts then due as to the lands so surrendered. The surrender shall be made by depositing with the Department one copy of the instrument of surrender, and thereafter the lessee or record title holder shall incur no further liability under the lease as to the land so surrendered.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-862 repealed, new Section R12-5-862 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2213 renumbered from Section R12-5-862 (Supp. 93-3).

#### R12-5-2214. Expired

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-863 repealed, new Section R12-5-863 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2214 renumbered from Section R12-5-863 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

#### R12-5-2215. Royalty

Lessee shall pay to the lessor as royalty not less than 12 1/2% or as otherwise specified in the publication and the lease of the market value at the well head or point of delivery to the purchaser of all



geothermal resources and associated by-products; which market value shall be established by submitting to the Department every month properly metered and calibrated volume charts and chemical analysis reports (settlement tests) in a manner approved by the Department. These charts and analyses shall be collected, sampled and computed for gross value by an approved, qualified and bonded engineering company, and at the lessee's expense. The market value of the geothermal resources shall be determined by posted prices paid industry-wide for each marketable constituent and unit of measurement thereof, and shall be due and payable not later than the 25th day of the calendar month following the calendar month of production. If lessor elects to take its royalty geothermal resources in kind, lessee shall, upon lessor's request and at lessor's sole risk, furnish free of cost to lessor, lessor's percent of royalty production to an acceptable metering point on the lease.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-864 repealed, new Section R12-5-864 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2215 renumbered from Section R12-5-864 (Supp. 93-3).

#### R12-5-2216. Abandonment -- Other Uses

As provided for in A.R.S. § 27-667(C) any well drilled for geothermal resource which has penetrated fresh water zones may be disposed of as a fresh water well subject to the following conditions:

1. State's lessee must file written request for such use with the Department.
2. Condition of the hole must be such that plugging back to fresh water zone can be safely accomplished.
3. Must meet the requirements of the rules and regulations of the Department pertaining to such use.
4. Must meet the requirements of the Commission's rules and regulations pertaining to disposal of groundwater.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-865 repealed, new Section R12-5-865 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2216 renumbered from Section R12-5-865 (Supp. 93-3).

#### R12-5-2217. Logs -- Reports -- Records

The State Land Commissioner or the Commissioner's designated representative shall have the right to inspect all records, books or accounts pertaining to geothermal resources taken from leased state lands, and at the request of the State Land Commissioner the holder of the lease shall furnish such reports, logs, assays, or cores, as the Commissioner or the Commissioner's designated representative may deem necessary for the proper administration of the state lands under lease. Lessee shall file production and royalty reports in triplicate upon forms as may be prescribed by the State Land Commissioner no later than the 25th day of the calendar month following the calendar month of production.

#### Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-866 repealed, new Section R12-5-866 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2217 renumbered from Section R12-5-866 (Supp. 93-3).

#### R12-5-2218. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2218 renumbered from Section R12-5-867 (Supp. 93-3).

#### R12-5-2219. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2219 renumbered from Section R12-5-868 (Supp. 93-3).

#### R12-5-2220. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2220 renumbered from Section R12-5-869 (Supp. 93-3).

#### R12-5-2221. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2221 renumbered from Section R12-5-870 (Supp. 93-3).

#### R12-5-2222. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2222 renumbered from Section R12-5-871 (Supp. 93-3).

#### R12-5-2223. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2223 renumbered from Section R12-5-872 (Supp. 93-3).

#### R12-5-2224. Renumbered

#### Historical Note

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2224 renumbered from Section R12-5-873 (Supp. 93-3).

### ARTICLE 23. BOARD OF APPEALS

#### R12-5-2301. Definitions

Unless the context requires otherwise, the words defined below shall have the following meaning when found in these rules:

1. "Appellant" means the person who files a notice of appeal with the Clerk pursuant to A.R.S. § 37-215.
2. "Board" means the Land Department Board of Appeals appointed by the Governor pursuant to A.R.S. § 37-213(A).
3. "Chairperson" means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the Land Department Board of Appeals.
4. "Clerk" means the person designated as Clerk of the Land Department Board of Appeals.
5. "Commissioner" means the Land Commissioner of the state of Arizona, or the Land Commissioner's duly authorized deputy.
6. "Department" means the Land Department of the state of Arizona.
7. "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.
8. "Person" shall include an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

9. "Person outside the Board" means any person other than a Board member, an employee, or consultant of the Board, or an attorney representing the Board in its adjudicatory role.

#### Historical Note

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Former Section R12-5-2301 renumbered to R12-5-2315, new Section R12-5-2301 adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2302. Contents of a Notice of Appeal

A notice of appeal filed pursuant to A.R.S. § 37-215 shall contain a clear and concise statement of the grounds for appeal and the specific relief requested.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2303. Notice of Hearing

- A. Setting a hearing date. Within 10 days from the date of receiving the notice of appeal under A.R.S. § 37-215, the Clerk shall set a date for the hearing in compliance with A.R.S. § 37-215.
- B. Service of a notice of hearing. At least 30 days before the date of the hearing, the Clerk shall serve notice of the hearing, by certified mail or personal service, to the appellant, the Department, and all other parties to the appeal.
- C. Contents of a notice of hearing. The notice shall contain:
  1. A statement identifying the Board, the parties, and the matters asserted;
  2. A statement of the date, time, and place of the hearing;
  3. A statement of the legal authority and jurisdiction under which the hearing is to be held;
  4. A statement advising the parties of the requirements of R12-5-2305; and
  5. A reference to the particular Sections of the statutes and rules involved.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).  
Amended by final rulemaking at 9 A.A.R. 88, effective February 17, 2003 (Supp. 02-4).

#### R12-5-2304. Prehearing Disclosure

- A. Witnesses and Exhibits. At least 10 days prior to the date set for hearing, each party shall:
  1. File with the Clerk:
    - a. A list of all witnesses who may be called to testify on behalf of the party,
    - b. Eight copies of all documentary exhibits to be offered on behalf of the party;
  2. Serve upon each other party one copy of the list of witnesses and a list of all exhibits to be offered on behalf of the party.
- B. The Board shall exclude the testimony of any witness and the admission of any exhibit not disclosed pursuant to subsection (A), unless the Board determines that the admission of the evidence would be in the interests of fairness and justice.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2305. Continuances

- A. General. The Chairperson may, for good cause, continue or reschedule any hearing before the Board on the Chairperson's own motion, on application of a party, or on stipulation of the parties.
- B. Application for continuance.

1. Filing. A party applying for a continuance of a hearing shall file an application with the Clerk of the Land Department Board of Appeals and serve all parties no later than 10 days before the scheduled date of the hearing. The Chairperson may allow the party to file and serve the motion after the expiration of such period for good cause.
2. Contents. The application shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time being requested.
- C. Response; reply. Any opposing party may, within five days after such service, file and serve a response. A reply shall be permitted.
- D. Stipulations. The parties may stipulate to a continuance. The Board will accept such stipulations filed no later than 72 hours prior to the date and time scheduled for the hearing.
- E. Time limits. Absent consent of the parties, a continuance cannot be granted which would result in the hearing not being conducted in compliance with A.R.S. § 37-215(C).

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).  
Typographical correction made to A.R.S. reference in R12-5-2305(E) (Supp. 96-3).

#### R12-5-2306. Computation of Time; Additional Time After Service by Mail

- A. Computation. In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B. Service by mail. Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, five calendar days shall be added to the prescribed period.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2307. Service of Documents Other than Subpoenas

- A. Method of service. Unless otherwise specified by these rules, service of documents other than subpoenas shall be made by
  1. Hand delivery with receipt or certificate of delivery,
  2. Legible facsimile with confirmed receipt,
  3. Personal service, or
  4. By regular mail, properly addressed with postage prepaid, to each party in the proceeding. When a party has appeared by an attorney, service upon such attorney shall be deemed service upon such party.
- B. Time of service. Service shall be deemed made at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2308. Subpoenas

- A. Issuance of subpoenas. In connection with any hearing, the Chairperson, upon written application of a party or on the

Chairperson's own motion, may issue subpoenas requiring the attendance and testimony of witnesses or the production of documentary or other tangible evidence, or both. Applications to compel witnesses who are not parties to the proceedings, or agents of such parties, to produce documentary evidence shall specify the books, papers, or documents desired.

- B. Service of subpoenas. Subpoenas shall be personally served. Service of each subpoena is the responsibility of the party requesting the subpoena.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2309. Motions

- A. Generally. An application to the Board for an order or other relief shall be made by motion. Unless the motion is made during a hearing, it shall be made in writing. The motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. Prehearing motions shall be considered on the written materials submitted by the parties, unless the Chairperson directs otherwise.
- B. Response to motion; reply. Any party may file a response to a prehearing motion within five days after service of such motion and shall serve the response on the moving party. The moving party shall have five days after service of a response to file a reply to that response.
- C. Affidavits. Motion documents which rely on facts not apparent in the record, and of which the Board cannot take judicial notice, shall be supported by affidavit or other satisfactory evidence.
- D. Rulings on motions. The Chairperson may rule on procedural motions, but all other motions shall be ruled upon by the Board.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2310. Hearing

- A. Recording of hearing. The hearing shall be tape-recorded or stenographically recorded.
- B. Order of appearance. The Chairperson shall designate the order in which parties shall introduce their evidence.
- C. Improper Conduct. Noncompliance with any order of the Chairperson or disruption of any hearing shall be deemed improper conduct and grounds for exclusion from the hearing.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2311. Evidence

- A. Generally. All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The Chairperson shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence the Chairperson has determined to be irrelevant, immaterial, or unduly repetitious.
- B. Evidence. The Chairperson may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings.
- C. Official Notice. The Board may take official notice of any matter than might be judicially noticed by a superior court of the state of Arizona or any matter that is peculiarly within the knowledge of the Board as an expert body.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2312. Objection to Decision by Chairperson

If any member of the Board objects to a decision of the Chairperson pursuant to these rules, the Board member may request that the Board vote on the matter in question and the Chairperson shall submit the matter to a vote of the entire Board.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2313. Ex Parte Communications

- A. Prohibitions. In any contested case before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
1. No interested person outside the Board shall make or knowingly cause to be made to any Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
  2. No Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding shall make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the proceeding.
- B. Record. A Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, shall place in the public record of the proceeding all such written communications and all written responses to the communications and by oral testimony in the record state the substance of all such oral communications.
- C. Action by Board. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
- D. Effective time period. The provisions of this Section shall apply beginning at the time in which a notice of appeal is filed in a contested case unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of the person's acquisition of such knowledge.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2314. Decision of the Board

- A. Time limit. Unless the parties stipulate otherwise, the Board shall render its final decision within 60 days from the date of the hearing.
- B. Contents. The Board's decision shall contain its findings of facts and conclusions of law, separately stated, and the decision.

#### Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).

#### R12-5-2315. Rehearing or Review of Decision

- A. Generally. Except as provided in subsection (F), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing or review of the decision, with supporting memorandum, specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been

served when personally delivered or mailed by certified mail to the party at his last known residence or place of business. The Board may also grant a rehearing or review on its own initiative not later than 15 days after a written decision has been issued.

- B.** Amendment of motion; response; oral argument. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 days after service of such motion or amended motion by any other party. Motions and responses shall be supported by memoranda discussing legal and factual issues. Oral argument may be requested by either party or by the Board.
- C.** Grounds for rehearing or review. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings of the Board or its staff or the prevailing party, or any order or abuse of discretion which deprived the moving party of a fair hearing;
  2. Misconduct of the Board or its staff or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  6. That the decision is not justified by the evidence or is contrary to law.
- D.** Affirmation or modification of decision; grant of rehearing or review. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons set forth in subsection (C), and, after giving notice and an opportunity to be heard, the Board may grant a rehearing for reasons not specified in a party's motion. An order modifying a decision or granting a rehearing shall specify the grounds for such order.
- E.** Affidavits. When a motion for a rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 10 days by the Chairperson of the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- F.** Emergencies. If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- G.** Time Limits. A motion for review or rehearing will be considered expeditiously and in no case more than 90 days after it has been filed. If a rehearing is granted it will be held expeditiously and in no case more than 90 days after the order granting the rehearing has been issued.

#### Historical Note

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Section R12-5-2315 renumbered from R12-

5-2301 and amended effective November 27, 1995 (Supp. 95-4).

### ARTICLE 24. EXPIRED

*Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).*

#### R12-5-2401. Expired

##### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

#### R12-5-2402. Expired

##### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

#### R12-5-2403. Expired

##### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

#### R12-5-2404. Expired

##### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

#### R12-5-2405. Expired

##### Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

### ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

#### R12-5-2501. Petition

- A.** A petition to nominate trust land suitable for conservation purposes may be filed at the Arizona State Land Department during regular business hours. The petition shall be made on a form provided by the Department.
- B.** A petitioner shall nominate Trust lands in a manner consistent with and only for lands considered eligible under A.R.S. § 37-311, et seq.
- C.** A petitioner shall include the following information in a petition to nominate trust land suitable for conservation purposes:
  1. A legal description of the land and a map that identifies the Township (T), Range (R), section, land description, acreage and county where the land is located. (Example: T1N, R3E, Section 17, SWNW, 40 acres, Maricopa County);
  2. A statement of proposed conservation uses of the land;

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3. A statement of why the land is suitable for conservation purposes with reference to the criteria identified in R12-5-2502(A);
  4. A statement of the existing surface uses on the land and how each existing use is affected both physically and economically by the proposed conservation use;
  5. An identification of the local jurisdiction in which the land is located;
  6. A statement of the local governing authority's comprehensive plan designation and existing zoning for the land and how the proposed conservation use is or is not consistent with the comprehensive plan and zoning;
  7. A statement of the positive and negative physical and economic impacts on the local community nearest the land;
  8. A statement of who or what entity will likely manage the land if, after the land is reclassified as suitable for conservation purposes, the land is approved for lease or purchase for conservation purposes; and
  9. A statement of any known mineral potential, including sand and gravel, of the lands.
- c. Diversity of plant communities or biodiversity of plant or animal species;
  - d. Habitat condition, whether intact or degraded; or
  - e. Distance from an existing or proposed roadway, utility line, or urban development;
6. Other:
    - a. Geologic and topographic features:
      - i. Existence of a significant wash, slope, or other topographic feature;
      - ii. Existence of a unique rock outcropping, formation or other unusual geologic feature; and
      - iii. Known soil conditions unsuitable for development purposes;
    - b. Watershed integrity: Relationship of the land to maintenance of the integrity of one or more watersheds;
    - c. Floodplain management: Impact of the 100-year floodplain on the land;
    - d. Surface water and groundwater:
      - i. Existence of a spring or other wetland;
      - ii. Occurrence of perennial or intermittent stream flow; and
      - iii. Potential for groundwater recharge.
    - e. Long-term viability of the land for conservation management:
      - i. Viability of the land based on its size, configuration, and location for successfully conserving the resources it seeks to protect; and
      - ii. Relationship of conservation of the land to resolving wildland fire issues, particularly in the urban-wildland interface;
    - f. Local, regional, or other planning considerations:
      - i. Relationship between the proposed conservation designation and adopted local and regional plans and policies; and
      - ii. Relationship of the land to other federal, state, local, or private land trust preserves, holdings, or plans;
    - g. Recreation:
      - i. Existence of or proposed trail-based or other low impact recreation opportunities; and
      - ii. Existence of direct access to or from adjacent public or private lands used for recreational purposes;
    - h. Accessibility:
      - i. Public accessibility and nature of that accessibility to the land; and
      - ii. Impact of accessibility, based on the purpose of conservation of the land;
    - i. Scientific education:
      - i. Historic use of the land for scientific research purposes; and
      - ii. Opportunities for scientific education;
    - j. Types of multiple use:
      - i. Multiple use potential of the land; and
      - ii. Impact of specific multiple uses on the land;
    - k. Resource production preservation:
      - i. Existence of grazing lands under petition that a conservation designation may help to protect;
      - ii. Existence of prime agriculture areas under petition that a conservation designation may help to protect; and
      - iii. Protection of the resource production component (such as grazing, agriculture, mining, and timber) of the local or regional economy;
    - l. Relationship to other state trust lands:

**Historical Note**

Adopted effective March 5, 1998 (Supp. 98-1).

**R12-5-2502. Reclassification**

- A.** Criteria: Reclassification of state lands as suitable for conservation purposes shall be in the best interest of the Trust as determined by the Commissioner. The Commissioner and the Conservation Advisory Committee may consider any or all of the following criteria in evaluating whether the nominated land should be reclassified as suitable for conservation purposes:
1. Open space: Existence of substantially undisturbed open space values that make the land's conservation an asset to the community or to other adjacent developable state trust land;
  2. Unique scenic beauty:
    - a. Existence of a natural community landmark such as a significant mountain vista; or,
    - b. Existence of a scenic vista on to or through the land under petition from nearby major roadways or pathways, in addition to the mere existence of undeveloped open space;
  3. Wildlife and vegetation:
    - a. Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health and diversity of the vegetation or the number and diversity of the wildlife;
    - b. Existence of endangered, threatened, or protected plants or endangered or threatened wildlife species as identified under federal or state laws;
    - c. Existence of significant stands of a signature plant characteristic of the location;
  4. Cultural resources:
    - a. Existence of a prehistoric or historic archaeological site;
    - b. Existence of a historic structure; or
    - c. Comparative costs of mitigation, data recovery, or preservation compared to potential revenue production of the land;
  5. Wildlife habitat:
    - a. Existence of sufficient acreage and habitat quality to support populations of endangered, threatened, or other particular species;
    - b. Interconnection between the land under petition and nearby public lands for wildlife movement;

- i. Proximity to other state trust lands;
    - ii. Development capability of adjacent state trust lands; and
    - iii. Anticipated timing of development activity on adjacent state trust lands;
  - m. Preexisting protections: Existence of any federal, state, or local law requiring protection by existing lessee of proposed conservation values;
  - n. Tourism: Impact on local or regional tourism;
  - o. Benefit to the Trust: Whether and for what reason reclassification is in the best interest of the Trust;
- B. Multiple Petitions:** If multiple petitions are received and the Commissioner determines that reclassification is in the best interest of the Trust, the Commissioner may reclassify the land with the conservation purpose stated in one or more than one of the petitions, or the Commissioner may reclassify the land without stating a conservation purpose.
- C. Management Plan:** Upon reclassification, the Commissioner may require a party to submit a management plan to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space values.
- Historical Note**  
Adopted effective March 5, 1998 (Supp. 98-1).
- R12-5-2503. Bond**
- A.** Under A.R.S. § 37-312(D), a petitioner shall submit a bond in an initial amount of \$1,000 with a petition to nominate trust land suitable for conservation purposes. The bond shall be a surety bond or a cashier's check. The State Land Commissioner may require an additional bond amount under A.R.S. § 37-312 if the processing costs of the petition are estimated to exceed the initial bond amount based on the following factors:
- 1. Planning Costs: Planning involves review, consideration, and evaluation of:
    - a. Evidence and testimony presented at public hearing;
    - b. Physical and economic impact on other land owned or controlled by the current lessee or on the local community;
    - c. Existing holding leases, existing planning permits, and development plans in progress;
    - d. Input from local planning and zoning agencies and regional planning authorities;
    - e. Mineral potential, including sand and gravel; and
    - f. Consistency with the Enabling Act, the State Constitution, and Arizona Revised Statutes;
2. Notice: Development and mailing of a notice of intent to classify lands suitable for conservation purposes and a notice of public hearing to:
- a. Existing lessees;
  - b. Local planning and zoning agencies and regional planning authorities;
  - c. Owners of property within 300 feet of the land;
  - d. Persons who have requested notice of classification of lands suitable for conservation under A.R.S. § 37-311, et seq., with the Department; and
  - e. Affected state agencies;
3. Advertisement: Notice of public hearing for six publications in a newspaper of general circulation in the county where the land is located;
4. Public Hearing: Receipt and processing of oral and written testimony regarding the proposed reclassification including, but not limited to, review, consideration, and evaluation of testimony, as well as the costs of meeting facility and equipment rental.
- B.** Upon reclassification of all or a portion of the land as suitable for conservation purposes, the successful petitioner shall forfeit the initial and any additional bond amounts to the state under A.R.S. § 37-312(D).
- Historical Note**  
Adopted effective March 5, 1998 (Supp. 98-1).